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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 19[illegible]8

No. 36569

L. O. JOHNSON, JR., AND SEA FOOD COMPANY, TANAS HEBERT, ET AL., APPELLANTS,

vs.

E. J. HAYDEL, FRED SCHOUEST, L. S. CARRIAC, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA

FILED FEBRUARY 19, 1929

(33,221)

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[fol. 1] [Caption omitted]

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IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA

In Equity. No. 19011.

L. O. Johnson and Sea Food Company

v.

Louis A. Marks et al.

Bill of Complaint—Filed Jan. 20, 1928

To the Honorable District Court of the Eastern District of the State of Louisiana, at New Orleans sitting:

Comes L. O. Johnson, an adult resident and actual citizen of Biloxi, Harrison County, Mississippi, trading and doing business as the Johnson Fish & Oyster Company, and the Sea Food Company, a Louisiana corporation, organized under the laws of the State of Louisiana, domiciled and having an office and place of business in New Orleans in said state, in this their original bill of complaint against Louis A. Mereaux, Sheriff of St. Bernard Parish, in the State of Louisiana, an adult citizen of said parish and State; Ernest Alberti, Sheriff of Plaquemines Parish, in said State of Louisiana, an adult citizen of said State and parish; Leander H. Perez, District Attorney in and for the Parishes of St. Bernard and Plaquemines, in the State of Louisiana, an adult resident of the Eastern District of the State of Louisiana; Percy Saint, Attorney General of the State of Louisiana, an adult resident of New Orleans, in the State of Louisiana; Valentine K. Irion, Commissioner of Conservation of the [fol. 3] State of Louisiana, an adult resident of New Orleans, in the State of Louisiana; James N. McConnell, Director, Oyster Division, Department of Conservation, of the State of Louisiana, an adult resident of New Orleans, in the State of Louisiana; E. J. Haydel, Fred Schouest, and L. R. Cabriac, adult residents of the State of Louisiana: each and all of said defendants heretofore mentioned being

actual citizens and residents of the Eastern District of the State of Louisiana, and residing within the jurisdiction of this Honorable Court, and respectfully show unto the Court the following statement of facts:

I

This suit is brought in a court of equity of the United States, and the jurisdiction of the Court is asserted and claimed for that, the complainants are threatened with and subjected to the irreparable harm, injury and damage hereinbefore set out, and are without adequate remedy except in a court of equity, for the purpose of preventing a multiplicity of suits, for injunction, and other equitable relief.

II

The Amount involved in this suit exceeds the sum of Three Thousand Dollars, exclusive of interest and costs, in that the complainants have entered into a contract, hereinafter set out, for the purchase and sale of oysters in the shell of the value greatly in excess of Three Thousand Dollars, which they would be prevented from complying with unless they obtain the relief prayed for in this cause, and the value of the contract and the immunity of the complainants, and each of them, from the liability, penalty and [fol. 4] forfeiture complained of herein, and the value of the right of the Sea Food Company to sell to L. O. Johnson, and the value of the right of L. O. Johnson to accept compliance on the part of the Sea Food Company with the contract hereinafter set out, and the loss and inconvenience, harm, injury and damage which would be sustained by and caused to each of the complainants if denied the relief prayed for, greatly exceeds the sum of Three Thousand Dollars, exclusive of interest and costs, as will more fully hereinafter appear.

III

This is a controversy arising over the Constitution and laws of the United States, in that the complainants allege, aver and claim that Sections 1, 2, 3, 4, 23 and 24 of Act Number 258, passed by the Legislature of Louisiana, and approved July 14, 1926, appearing in the public acts of the

State of Louisiana, a copy of which act is hereto attached and marked Exhibit "A," the same being asked to be considered as if set out herein in words and figures, violate and are in contravention of Paragraph 3, Sub-division 8, Article 1, of the Constitution of the United States, conferring upon the Congress of the United States the exclusive power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes, and said sections of said law, and each of them, are contrary and in violation of Paragraph 2 of Article 6, of the Constitution of the United States, containing the following language:

"This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the [fol. 5] judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

That said sections, and each of them, violate Article 1, of the Fourteenth Amendment to the Constitution of the United States, containing the following provision:

"I. Who are citizens.—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Complainants further claim that said Act of the Legislature of the State of Louisiana, and especially the sections hereinbefore set out, if so construed as to deny the complainants the relief prayed for in this bill of complaint, violates Section 2 of the Bill of Rights of the State of Louisiana, in the following language:

"No person shall be deprived of life, liberty, or property, except by due process of law. Except as otherwise provided in this Constitution, private property shall not be

taken or damaged except for public purposes and after just and adequate compensation is paid."

[fol. 6] And also Section 14, of Article 19, of the Constitution of the State of Louisiana, containing the following language:

"It shall be unlawful for persons or corporations, or their legal representatives, to combine or conspire together, or to unite or pool their interests for the purpose of forcing up or down the price of any agricultural product or article of necessity, for speculative purposes; and all combinations, trusts, or conspiracies in restraint of trade or commerce, and all monopolies or combinations to monopolize trade or commerce, are hereby prohibited in the State of Louisiana, and it shall be the duty of the Attorney General, of his own motion, or any District Attorney of the State, when so directed by the Governor or the Attorney General, to enforce this provision, by injunction or other legal proceedings, in the name of the State of Louisiana, and particularly by suits for the forfeiture of the charters of offending corporations, incorporated under the laws of the State of Louisiana, and for the ouster from the State of foreign corporations. Provided, however, that nothing herein contained shall prevent the Legislature from providing additional remedies for the enforcement of this section.

The provisions of this section are self-operative."

That said sections, and each of them, violate Article 1, Section 10, of the Constitution of the United States, which is in the following language:

[fol. 7] "Powers denied the Individual States.—1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque or reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility."

[fol. 8] The the complainant, Sea Food Company, is a corporation incorporated under the laws of the State of Louisiana, the object and purposes of which are stated in its charter granted to it by the State of Louisiana, to-wit:

"The objects and purposes for which this corporation is organized, and the nature of the business to be carried on by it are hereby declared to be: To buy, sell, can, import and export oysters, shrimp, fish, fruit and vegetables; to buy, operate and run boats and seines necessary to catch said shrimp, oysters and fish, and generally to do and engage in any business or enterprise connected with, growing out of, or incidental to the objects and purposes hereinabove set forth or contemplated by this charter."

That a copy of said charter is hereto attached and marked Exhibit "B" to this original bill of complaint, the same being asked to be considered as if set out herein in full in words and figures.

That said complainant has and maintains an office in the city of New Orleans, in the state of Louisiana; that it is engaged in the oyster business at Biloxi, Harrison County, Mississippi, and is engaged in the wholesale raw oyster business in the state of Mississippi, and between Mississippi, and other states in the Union; is engaged in the packing and canning and manufacturing the by-products of the shells of oysters, and shipping and selling the same in interstate commerce throughout the United States and foreign countries; that complainant, L. O. Johnson, is engaged in [fol. 9] a similar line of business; that complainant, L. O. Johnson, has a large oyster packing plant in Biloxi, Mississippi, with schooners and other equipment necessary to catch oysters; that the total investment in said business is approximately Seventy-five Thousand Dollars; and each of said complainants are engaged in buying, selling, packing and canning oysters, and in shipping and selling the same in interstate commerce.

That a brief statement of the oyster business may be stated as follows:

The oyster business of the United States originated in Chesapeake Bay, Maryland, where the oysters were canned a number of years before any cannery was established in the South. Sometime after its establishment in Maryland a number of Maryland citizens came to the Mississippi Gulf Coast and established the first cannery in Mississippi or Louisiana. This was probably fifty years ago and from this beginning a number of factories gradually sprang up

in Biloxi and Biloxi became the center of the southern oyster packing industry, most all of the other factories in Louisiana or Mississippi having been established by persons who had learned the business at Biloxi. The reason for this condition was both economical and physical, as while Louisiana had by far the largest supply of natural growth reef oysters, this supply being almost inexhaustible, still Biloxi is nearly as near to these oysters as any important town in Louisiana. Besides, this the travel way from Biloxi to the oyster beds is all a free expanse of gulf waters, while in order to get in to any populated community of Louisiana from the oyster beds it is most always necessary to traverse privately owned land or go through canals that are privately owned; also, Biloxi, having a healthful, salu- [fol. 10] brious climate, furnishing a much better home for the workers than could be furnished in a like community in Louisiana, and for this reason attracts the best type of fishermen, that is, those with the most ambition and intelligence. In addition to these reasons, — the packing and canning of oysters, as well as any other meats or vegetables, it is very necessary that one have a splendid supply of pure water and this in an almost perfect and unlimited state is found in the many hundreds of artesian wells along this Gulf Coast. The oyster industry developed soon two sides, the first being that of packing or canning what is called cove oysters. The method of carrying on this business is as follows: Men go out in large boats or schooners to the oyster reefs in Mississippi Sound or Louisiana Marsh and either dredge these oysters up from the bottoms by means of a basket which swings along the side of the boat as it is in motion, or tong them from the bottom with a contraption that looks like two rakes fastened together. The shells and small oysters are then knocked from the large bunches and thrown back for a further growth, and the mature oysters are brought in to the factory and loaded into open cars on baskets and these baskets are then placed in a closed box and steam is turned into the box, causing the oysters to immediately open, when they are taken from the steam box and women, children and old men very quickly, after they have become adept, extract from the shells the meat, which is then washed and weighed and placed into cans and further steamed for a few minutes,

labeled, and sent in shipment to all parts of the world. For, while oysters are to be found in nearly every part of the globe, eatable oysters for canning in commercial quantities are found in few places except the Coast of the [fol. 11] United States from Delaware to Texas, with the very largest natural reefs found inside and on the skirts of the fringes of marsh which forms the southern and part of the eastern boundary of Louisiana, extending for over two hundred miles east and west. In the other side of the industry, oysters are caught in the same manner, except with more care, and are brought into Biloxi and other points, and by skilled adult men are opened while the oyster is alive and the raw oyster is extracted from the shell, placed in a can which is packed in ice and shipped raw to all the states of the United States, so that one can obtain just as good an oyster cocktail in Minneapolis as he could in New Orleans. One side of the industry at the present time is nearly as large as the other, for while the packers have more money invested in their business, the profit obtained by the raw shipper is probably as large as the profit obtained by the packers. Biloxi obtains her oysters, aside from the supply in Mississippi, from that part of Louisiana lying east of the Mississippi River and North and west of the Gulf of Mexico and South of Orleans Parish, comprising the marsh or eastern part of the two parishes of St. Bernard and Plaquemines. This marsh is probably thirty miles wide and meanders with the shore line for a distance of ninety miles. In it are hundreds of bays, bayous and inlets, all of which have been found agreeable to the cultivation of oysters, and while oysters have been secured in large quantities from this territory for years, there is at the present time almost an inexhaustible supply remaining, for while the reefs that are worked sometimes become depleted, still if they are not tonged or dredged it will result in such a great accumulation of oysters on the reefs that they [fol. 12] will become rank as in the case of vegetables grown without thinning, and will lose their natural size and form in great bunches called cooning, thereby soon depriving them of any commercial value whatsoever. The supply of oysters in Louisiana at the present time is very greatly in excess of any possible demand of those factories on the east side of the Mississippi River who handle oysters. For

instance, on the east side of the Mississippi River there are two plants handling oysters, one is at Violet, Louisiana, and one is at Caernovan, Louisiana, presently the latter plant being out of business on account of the crevasse, and these two plants working together could probably handle 1,000 barrels per day; whereas, under normal conditions the plants at Biloxi have secured 3,000 barrels per day, having a larger capacity, however, than that, this capacity being at least 5,000 varrels per day, and were these oysters to remain uncaught it would only result in an accumulation on the bed that would soon destroy the value of the remaining oysters on the bed. The fact of the inexhaustible supply of Louisiana oysters is greatly proven by the fact that except for private cultivation Louisiana is one of the few states where no effort has been made to replenish the oyster beds through state efforts, the conservation activity being confined exclusively to proper supervision of the catching of oysters. In this respect Louisiana has a very wonderful and efficient system, having one of the best conservation departments in the southern states. On account of the Mississippi River dividing Louisiana, it is quite impracticable to transport oysters from the eastern to the western parishes, and this has not been done in any large quantities. [fol. 13] The western banks of the River furnish nearly all the domestic oysters used in Louisiana, that is, the neighborhood of Bayou Cook, Cyprian Bay, having an industry supporting probably 300 or 400 men where these oysters are taken from the reefs, and then sold to the consumers in Louisiana. This furnishing a complete supply of eatable oysters in Louisiana without ever touching any of the natural oyster beds or reefs. These domestic oysters are found about fifty miles below New Orleans on the west banks of the Mississippi River, but the principal oyster industry in Louisiana is centered around Homer and Morgan City, Louisiana, about one hundred miles west of New Orleans, wholly outside of the range of fishing in so far as the eastern banks of the river is concerned. Aside from this fact, around Morgan City, that is, in the bays and bayous of the gulf within catching distance from Morgan City is almost an inexhaustible supply of oysters, this being entirely separate and distinct from the parishes of St. Bernard and Plaquemines.

[fol. 14] V

Complainants show unto the court that the Sea Food Company, complainant, is engaged in the business of catching, packing and canning oysters, but does not have a factory or shucking plant in the state of Louisiana; and that the said complainant upon the 12th day of January, 1928, contracted to sell, transport and deliver to the complainant, L. O. Johnson, Jr., during the year 1928, 1,000 barrels of oysters in shell per day, and that the said Sea Food Company are to catch or purchase said shell oysters in the state of Louisiana aforesaid, and to convey and transport the same from the State of Louisiana to the complainant, L. O. Johnson, Jr., in the State of Mississippi; and that the obtaining of said oysters in shells is necessary on the part of said L. O. Johnson, Jr., in order that he may supply the demands of his business in interstate and foreign commerce, and in order that he may keep his plant at Biloxi, Mississippi, in operation, in which plant the said L. O. Johnson, Jr., has a large amount of money invested, to-wit, approximately the sum of Seventy-five Thousand Dollars; that it employs a large number of men, women and children, and that unless it obtains the supply of oysters under the terms of said contract from the Sea Food Company, that the business of said Johnson would be destroyed, its plant rendered valueless, its business ruined, and its employees thrown out of employment. That the said Sea Food Company desires to obtain said oysters in shells, either by catching and taking the same from the reefs situated in the parishes of Louisiana, aforesaid, or to purchase the same from some person, firm or corporation which has lawfully acquired the possession of same; that the existence and continuity of its business depends upon its ability to carry out [fol. 15] said contract, and that it is ready, willing and able to comply therewith; and that the said L. O. Johnson also is able, ready and willing to comply with the conditions, and covenants contained in said contract obligatory upon him, and is ready, willing and able to take, receive and pay for said oysters according to the contract price thereof. That under the Constitution and Laws of the United States, complainants are entitled to have and receive, one from the other, full and complete compliance

with the terms of said contract, and to have and receive the advantages, benefits and profits accruing from one to the other therefor. That each of said complainants now offer to comply with the conditions and covenants contained in said contract obligatory upon them. That a copy of said contract is hereto attached and marked Exhibit "C" hereto, the same being asked to be considered as if set out herein in full in words and figures.

[fol. 16] VI.

Complainants show unto the court that at the 1926 session of the Legislature of the State of Louisiana, approved July 14, 1926, the Legislature of the State of Louisiana passed an act known as Act No. 258 of 1926, a copy of which act has heretofore been made an exhibit to this original bill of complaint. That sections 2 and 3 of said act are as follows:

"Section 2. That the right to catch and take, can, pack, shuck or deal in or transport oysters from the waters of this State, and the right to lease bedding grounds for the cultivation and propagation of oysters for any of said purposes within any waters within the territorial jurisdiction of the State is hereby granted to any bona fide resident of this State, to any firm or association composed of citizens or residents of this State, or to any corporation domiciled in, or organized under the laws of this State, having their factory or shucking plant or places of business located within the State, upon the terms and conditions and subject to the restrictions and regulations herein set forth, or under the authority of which may be imposed by the Department of Conservation of this State. No person, firm, association or corporation, not a resident of or domiciled in this State is, or shall be, permitted to catch, take, can, pack, shuck, deal in or transport any oysters taken from the waters of this State, or lease any bedding grounds for [fol. 17] the cultivation and propagation of oysters for any of the above purposes. Any person, firm, association or corporation, violating any of the provisions of this section shall be liable to the penalties hereinafter provided. Any person, firm, or corporation, properly licensed to operate

in the oyster industry in this State shall be permitted to employ such labor, resident or non-resident, as may be required and to employ such vessels and their crew, resident or non-resident, as may be required upon said vessels being properly licensed as herein otherwise provided. This right to employ such non-resident labor or non-resident vessels shall be confined to the operation of any licenses as carried on within the State of Louisiana.

"Section 2. That it shall be unlawful for any person, firm or association, or corporation to ship beyond the limits of this State any oysters, caught or taken from the waters of this State, while the same are in the shells, or to export from this State any raw oyster shells. Such oyster shells are hereby declared to be the property of the State as one of its natural resources, necessary for use as relief in the propagation and development of the oyster industry in the State in order that a valuable food supply for its citizens may be conserved and developed. Any surplus of raw [fol. 19] oyster shells beyond the foregoing requirements may be used for the road building purposes, or ground for use as chicken feed or fertilizer, or any other purposes of material benefit to the State or to its citizens. In order that all of the inhabitants of the State of Louisiana may enjoy the State's natural food product it shall be lawful to ship in the shell oysters from any point in the State of Louisiana to any other point in the State of Louisiana for consumption, subject to such regulations and restrictions as may be imposed by the Department of Conservation. Any person, firm or corporation of this State, who shall lawfully take any oysters from any of the waters of this State, or lawfully acquire the same, shall have a qualified interest or property in the oysters so taken in the shells, which qualified interest may be sold or transferred to any other person, firm or corporation within the limits of the State of Louisiana; and after said oysters shall have been removed from the shell, within the State of Louisiana, such lawful taker or possessor, his heirs or assigns, as the case may be, shall be vested with all of the rights and property of the State in and to said oysters and shall have the right to sell such oysters or ship the same beyond the limits of the State, without restriction or reservation, and after [fol. 20] the raw oyster shells herein described shall have

been used for the purposes herein stated the right of property therein theretofore existing in the State shall pass to the lawful taker or then possessor of such oyster shells.

"In the case of any infringement of the aforesaid qualified interests in the taker or possessor of oysters in the shell, said taker or possessor may, in his own name, maintain his action against the wrongdoer, as may be proper; and in case of larceny or other public offense concerning such oysters while in the hands of a lawful taker or possessor, or upon holding grounds held by a lawful lessee, the ownership thereof shall be averred in such lessee, taker or possessor, when by law it is necessary to aver ownership. Any person, firm, association or corporation violating any of the provisions of this section shall be liable to the penalties hereinafter provided."

That Sections 23 and 36 of said Act are as follows:

"Section 23. Vessels, their tackle and appurtenances, used in the illegal taking of oysters from the waters of this State shall be seized and taken into possession by the officers and inspectors of the Department of Conservation charged with the enforcement of the conservation laws, and shall be delivered to the Sheriff of the Parish wherein the violation of [fol. 20] the law occurred, the Sheriff being authorized to permit of the release of said vessel, or of said vessel and cargo, from seizure upon the owner thereof furnishing bond with good and solvent surety, or sureties, satisfactory to the judge of the District Court having jurisdiction, in double the value of the vessel, its tackle and appurtenances, and cargo, if any, seized providing for the return of such vessel, its tackle and appurtenances, in good condition to abide the judgment of the Court.

"Such vessel shall be liable to forfeiture upon proceedings to that end being instituted in the name of the Department of Conservation by petition in an ordinary suit setting forth the cause of action and praying for the forfeiture of said vessel, its tackle and appurtenances, and the Judge of the District Court having jurisdiction shall be authorized to decree the forfeiture of such vessel, with its apparel and appurtenances, whereupon said vessel, with its apparel and appurtenances, shall be sold at public auction by the Sheriff having jurisdiction, and the proceeds of sale of

said vessel, its apparel and appurtenances, less the costs of the seizure and of the proceedings, and of the keeping and sale of said vessel shall be paid into the State Treasury to the credit of the Department of Conservation.

[Sec. 22] "The cargo of the seized vessel, if perishable, shall be sold at once by the Sheriff, or the seizing officer, to the best advantage, and the proceeds of the sale disposed of in the same manner as the proceeds from the sale of seized vessels.

"Should the owner of the seized vessel be able to prove to the satisfaction of the Court before which the case is tried that the captain, and crew, of said vessel had agreed in writing to comply with the provisions of Section 18 of this Act in every particular, and that it was not the intention of said owner to permit or allow any infraction of said provisions of the law, then, and in that event, the owner of said vessel shall be held blameless, the vessel released from seizure upon the payment of all costs, and the captain, person, agent, officer, crew or members thereof of said vessel, or by whom, or under whose direction said vessel was used in the illegal taking of said oysters in violation of Section 18 of this Act shall be adjudged guilty of violating the provisions of said section, and shall be sentenced to imprisonment in the parish jail for not less than ninety (90) days, nor more than two (2) years, in the discretion of the Court.

"Section 24. That any person, firm or corporation, or common carrier, their agents and officers violating any of the provisions of this Act, where a punishment has not been otherwise provided, shall be guilty of a misdemeanor and [Sec. 22] shall upon conviction thereof pay all costs of the prosecution, and be fined not less than One Hundred Dollars ($100.00) nor more than Five Thousand ($5,000.00) Dollars, or be imprisoned in the parish jail for not less than ninety (90) days, nor more than two (2) years, or both fined and imprisoned at the discretion of the Court, for each offense.

"Upon a second conviction of any person, firm or corporation, or common carrier, their agents and officers, for violating any of the provisions of this Act, where a punishment has not been otherwise provided, all licenses issued to such person, firm or corporation, hereunder, shall be for-

feited, and it shall be the duty of the Judge of the District Court before whom such trial shall be had to declare and order such forfeiture as a part of his sentence."

[fol. 23] VII

The complainants show unto the court that each of the parties complainant hereto are ready, willing and able to comply with the terms of said contract hereinbefore set out, but that if the Sea Food Company shall attempt to take from the reefs in either of the parishes of the State of Louisiana heretofore referred to any oysters in shells, or shall acquire said oysters in shells from any person, firm or corporation having the right to take the same therefrom, and shall attempt to convey and transport the same into the State of Mississippi for the purpose of complying with said contract, that it will be prosecuted and its vessels and property seized for confiscation, and its agents, servants and employees will be arrested and prosecuetd by the defendants herein.

Complainants show unto the Court that if the sections of said Act complained of are valid, the complainant, the Sea Food Company, its agents, servants and employees, engaged in the fulfillment of said contract, will be subjected to prosecution and will be liable to a fine as therein provided of not less than Five Hundred ($500.00) Dollars, nor more than One Thousand ($1,000.00) Dollars, or to imprisonment of not less than six months nor more than one year, or to both, within the discretion of the Court.

The complainants show unto the Court that each act of shipment will be a separate offense, and that the contract which the complainant Sea Food Company, has entered into with complainant Johnson, would require several deliveries on the part of the agents and servants of the complainant during each day, and that the agents and servants of the [fol. 24] complainant L. O. Johnson would be subjected to the same prosecution if delivery should be taken under said contract in the State of Louisiana, and that the employees of each of said complainants, and complainants themselves would be annoyed, troubled, harrassed, and would be prevented from carrying out and performing said contract, and, in addition thereto, their vessels, equipment and property would be seized and subjected to forfeiture, by reason

of which the complainants, and each of them, their agents and servants, would suffer irreparable harm, injury and damage, and the complainants are without remedy except in a court of equity, as they have no adequate remedy at law.

[fol. 25] VIII

The complainants show unto the Court that each of the sections of the Act hereinbefore set out and hereinbefore referred to, violate the Fourteenth Amendment to the Constitution of the United States, for that while the Sea Food Company is forbidden from taking oysters from the territory hereinbefore described in the State of Louisiana, unless it shall have and maintain a packing plant in the State of Louisiana, that any individual who may be a resident of the State of Louisiana for however short a time is granted such right, and any corporation organized under the laws of the State of Louisiana maintaining such a plant as is referred to in the Act, may exercise such right, and that the complainants are, therefore, denied the rights and immunities of citizens and denied the equal protection of the law and deprived of their property without due process of law.

Complainants show unto the Court that the said Sea Food Company could only operate a canning and packing plant in the State of Louisiana contiguous to the waters of Louisiana at a great loss.

Complainants show unto the Court that Sections 2 and 3 of said Act, and each of them, seek to compel the said Sea Food Company to pack and can oysters in the State of Louisiana at a great and serious loss to itself as a condition precedent to their making and complying with the contracts made and entered into in interstate commerce, wherefore, all of said sections of said Act hereinbefore referred to, violate the Constitution of the United States, in that such [fol. 26] sections directly burden interstate commerce.

Complainants further show unto the Court that the Act of the State of Louisiana especially permits and authorizes oysters in the shell to become the subject of barter, sale and trade, and to become an article of interstate commerce, and permits the complainants, and each of them, to acquire the same in the State of Louisiana; but the said Act, and especially the sections hereinbefore referred to, violate

the Fourteenth Amendment to the Constitution of the United States, in that they are forbidden from shipping the same out in the hulls; and that for the same reasons the said sections of said act violate that section of the Constitution of the State of Louisiana hereinbefore set out.

Complainants further show unto the Court that the sections of said Act hereinbefore referred to, and each of them, violate the commerce clause of the Constitution of the United States, in that said sections, and each of them, impose a direct burden upon interstate commerce; that said Act and said sections therein complained of were not passed to conserve the natural resources of the State of Louisiana, because said Act expressly permits the natural resources of the State, to-wit, the oyster and the hulls, to become the subject of barter and commerce and to pass from the State of Louisiana; but the effect and purpose of said act is to require the packing and manufacturing of said oysters inside of the State of Louisiana, which requirement has no relation to a proper exercise of the police power of the [fol. 27] State of Louisiana, has no relation to a conservation of the natural resources of the state, was not passed with any view of conserving to the people of Louisiana the oysters, the shells or any portion thereof, but said Act was passed with the object, purpose and view of the conservation and preservation of said oysters, as well as the shells, as a subject of interstate commerce, but interstate commerce is directly burdened therein, in that the effect of said Act and the sections complained of is to compel and require that oysters be packed and canned in the State of Louisiana before actually entering into interstate commerce, thus directly burdening interstate commerce. That Sections 2 and 3 of said Act are therefore unreasonable, unlawful, and arbitrary, and enacted solely and only for the purpose of compelling the packing and canning of oysters in the State of Louisiana, and that, therefore, said sections, and each of them, violate the commerce clause of the Constitution of the United States, as well as the Fourteenth Amendment thereto, and that provision of the Constitution of the State of Louisiana hereinbefore referred to.

Complainants further show unto the Court that Sections 23 and 24 of said Act, and each of them, violate the Fourteenth Amendment to the Constitution of the United States,

as well as Section 14 of the Constitution of the State of Louisiana, as well as the Commerce Clause of the Constitution of the United States, in that the effect and purpose of said sections, and each of them, is not only to impose a direct burden upon interstate commerce, and to deprive the complainants, and each of them, of their right to contract, [fol. 28] and to deprive the Sea Food Company, a Louisiana corporation, of its right to take and catch oysters from the reefs in said parishes of the State of Louisiana, but to create a monopoly in the manufacture and sale of oysters, and place the same in the hands of a small number of corporations engaged in the business in the State of Louisiana; that the necessary effect of the enforcement of said Act will be to reduce the market price of shell oysters paid persons engaged in the business of catching the same, and to increase in interstate commerce the price of the oysters canned and packed.

Complainants show unto the Court that only a negligible quantity of the hulls and shells of the oysters have ever been, or are now being used in the manufacture of fertilizer, chicken feed, or in the construction of roads in the State of Louisiana; but that such portion thereof as has heretofore or is now being manufactured, either into chicken feed or fertilizer, is shipped in interstate commerce.

[fol. 29] That the alleged purpose in Section 3 of said Act of conserving raw oyster shells for the purposes therein stated, is a pure subterfuge, without any intention of conserving for the benefit of the people of Louisiana any of the natural resources of the state, but is a pretense purely for the purpose of burdening interstate commerce by preventing raw oysters in the shells to be shipped from the State of Louisiana for canning, and without any intent, idea or purpose of securing or preserving such oysters or shells for the benefit of the people of the State of Louisiana. That it is necessary for the complainant, Sea Food Company, to send its agents, servants and employees, boats and equipment into the state of Louisiana, in order that it may acquire by purchase or otherwise, raw oysters in the shell, in order that it may comply with its contract with its co-complainant. That the Sea Food Company is dependent upon the oysters which it may be able to obtain from that

portion of the State of Louisiana hereinbefore described, for the purpose of fulfilling said contract. That the complainant, the Sea Food Company, will be unable to fill said contract unless it can get such raw shell oysters from said source, and that the complainant, L. O. Johnson, Jr. will be unable to secure and supply the oysters for the operation of his plant, unless the complainants are able to enjoin the enforcement of said act, and the said L. O. Johnson, Jr. is able to secure from the complainant, the Sea Food Company, the raw oysters in shells referred to in said contract.

[fol. 30]

IX.

Complainants show unto the Court that Sections 2, 3 and 4 of said Act, and Sections 22, 23 and 24 of said Act, violate the Fourteenth Amendment to the Constitution of the United States, as well as Section 2, of Article 1 of the Bill of Rights of the Constitution of the State of Louisiana, for the reason that in the enforcement of said law, firms, persons and corporations in the State of Louisiana are daily shipping out in interstate commerce large quantities of oysters in shell, which are being shipped in barrels and sacks, and with full knowledge of the officers of the law charged with the enforcement of the Act, are permitted to ship the entire oyster out, and that the statutes complained of, by construction of the officers charged with the enforcement thereof, are being construed as applicable only to oysters going out of the state for the purpose of being packed or canned outside of the State. That persons, firms and corporations in the State of Mississippi are daily and customarily taking out in the shells large quantities of oysters for commercial purposes.

[fol. 31]

X.

Complainants show unto the Court that the charter granted to the complainant, Sea Food Company, hereinbefore referred to, which charter is made an exhibit hereto, constitutes a contract between the said Sea Food Company and the State of Louisiana, and that the Sections of said Act, and each of them, hereinbefore referred to, have the purpose of depriving the said Sea Food Company of rights

granted to it by its charter, and for that reason the said sections, and each of them, violate Section 10, Article 1 of the Constitution of the United States, prohibiting a state from passing any law impairing the obligation of contracts.

[fol. 32] XI.

Complainants show unto the court that Louis A. Marks, Sheriff of St. Bernard Parish; Ernest Alberti, Sheriff of Plaquemine Parish; Leander M. Perez, District Attorney for the Parishes of St. Bernard and Plaquemine; Percy Saint, Attorney General of the State of Louisiana; Valentine K. Irion, Commissioner of Conservation of the State of Louisiana; James N. McConnell, Director, Oyster Division, Department of Conservation, of the State of Louisiana; E. J. Haydell, Fred Schouest and L. R. Cabriac, defendants, are all citizens and residents of the State of Louisiana, and are charged under the laws of the State of Louisiana, with the duty of enforcement of said Act; that all of said defendants reside within the jurisdiction of this Court, in the Eastern District of the State of Louisiana; that the complainants are ready, willing, able and anxious to proceed with the performance of said contract; that the complainant, Sea Food Company, has applied to the Conservation Department of the State of Louisiana for a license to take oysters from the reefs of said state in said parishes; that it has offered to pay all charges therefor and submit to all reasonable and proper conditions which the Conservation Department has the power to impose as a condition precedent thereto; that each of the complainants *are* ready, willing and offering now to pay all severance taxes, license taxes, and other charges, imposed by said Act or any section thereof; that the Sea Food Company only asserts the right to take oysters from the reefs of said parishes in the State of Louisiana during the periods of time provided by said Act, and offers to comply with all [fol. 33] regulations of said Act in respect to the time and manner of taking oysters from said reefs. However, complainants allege and aver that the said defendants have notified the complainants, that if they or either of them attempt to take any oysters from the reefs in the State of Louisiana above described, or either of them shall attempt

to convey or transport from the State of Louisiana any oysters in shells, or if either of them proceed with the performance and consummation of said contract entered into between the complainant heretofore set out, that the said defendants, who are the officers of the State of Louisiana charged with the enforcement of said Act, will promptly under the provisions of said Act interfere therewith by having them, their officers, agents or servants, arrested, and by forfeiting and confiscating their vessels, equipment and property.

Complainants allege, and aver that they are prevented from the carrying out of said contract in interstate commerce, and that, therefore, immediate and irreparable loss and damage is resulting and will continue to result to each of them, by reason of the unlawful acts and conduct of the defendants, who are proceeding to act and who will act under and by virtue of the terms of the Act of the Legislature of the State of Louisiana hereinbefore set out.

[fol. 34] XII

Complainants show unto the Court that while they allege and aver that the licenses and taxes imposed in said Act are unconstitutional and in violation of the Commerce Clause of the Constitution of the United States, the Fourteenth Amendment to the Constitution of the United States, for the reasons hereinbefore set out, they offer to pay all such taxes and charges as a condition precedent to the right of the complainant, Sea Food Company, to take and catch oysters from that portion of the State of Louisiana hereinbefore referred to, and as a condition precedent to the removal of said oysters from the State of Louisiana. Complainants in all things offer to do equity, and they aver that pending the hearing and determination of this controversy, the Sea Food Company will not catch, take, convey or acquire any oysters in the whole shell in the State of Louisiana, or attempt to transport any from the State of Louisiana, except upon the payment of the taxes and charges provided for in said Act.

XIII

The premises considered, complainants pray that this original bill of complaint, with the exhibits, be received and

filed; that a temporary restraining order issue from this Court restraining the defendants from the enforcement of said Act against complainants, their agents, servants and property, and from in any manner preventing or interfering with the execution of that certain contract between [fol. 35] the complainants hereto, hereinbefore set out; and that they be restrained and enjoined from prosecuting either of the complainants, or their agents or servants; and that they be restrained from interfering with, seizing, or attempting to confiscate, or in any manner interfering with the boats, property or equipment of the complainants, or either of them, used in the performance of said contract; and that an injunction will issue after a hearing before three Judges, as provided by the Acts of Congress, enjoining and restraining the defendants, and each of them, as hereinbefore set out.

Complainants further pray that process issue requiring the defendants, and each of them, to plead, answer or demur to the allegations of this bill of complaint in accordance with the Equity Rules, but not under oath, which is expressly waived. And at the final hearing of the case the Court will render a permanent injunction, enjoining the defendants, and each of them, from the enforcement of said Act; and that the right of the complainants to make and execute said contract be fully determined and adjudicated, and that the defendants, and each of them, be perpetually enjoined from in any manner interfering therewith.

If complainants have not prayed for the proper relief, the Court will grant such other, further and general relief as may be just and expedient in the premises.

(Signed) Seafood Company, By A. R. Heidenheim,
L. O. Johnson, Jr.

[fols. 36 & 37] *Duly sworn to by A. R. Heidenheim and L. O. Johnson, Jr. Jurat omitted in printing.*

[fol. 38] EXHIBIT TO COMPLAINT

Charter

"Sea Food Company"

UNITED STATES OF AMERICA,
State of Louisiana,
City of New Orleans,
Parish of Orleans.

Be it known, That on this 27th day of the month of June, in the year one thousand nine hundred and thirteen, before me Gustaf R. Westfeldt, Jr., a Notary Public, duly commissioned and qualified in and for the Parish of Orleans, State of Louisiana, aforesaid, therein residing, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the persons whose names are hereunto subscribed, who declared that availing themselves of the provisions of the laws of this State relative to the organization of corporations, they have covenanted and agreed, and do, by these presents, agree, bind, form and constitute themselves, as well as such other persons as may hereafter join or become associated with them, into a corporation and body politic in law, and for the objects and purposes, and under the agreements and stipulations following, to-wit:

Article 1

The name and style of this corporation shall be the "Sea Food Company" and under that name it shall have and enjoy the rights and privileges granted by law to corporations; it shall exist for a period of ninety-nine years from the date hereof; it shall have power and authority to contract, sue and be sued in its corporate name; to make and use a corporate seal, and the same to break or alter at pleasure; to hold, receive, purchase, convey, mortgage, hypothecate and pledge property, both real and personal; to issue notes and other obligations; to make and establish such by-laws, rules, and regulations for the corporate management and control of said company as may be deemed necessary and expedient.

Article 2

The domicile of said corporation shall be in the city of New Orleans, State of Louisiana, and all citations and other legal process shall be served on the president, and in his absence, on the vice-president. In case of the absence, or inability of both of said officers, then said process shall be served on the secretary.

Article 3

The capital stock of this corporation is hereby fixed at the sum of Three Thousand Dollars, divided into thirty shares of the par value of one hundred dollars each, which shall be paid for in cash, or may be issued at not less than par, in payment of property actually purchased by, or for [fol. 39] services rendered to, said corporation.

All shares of stock shall be full paid and nonassessable. No transfer of stock shall be binding upon the corporation unless made upon its books.

Article 4

The objects and purposes for which this corporation is organized, and the nature of the business to be carried on by it are hereby declared to be: To buy, sell, can, import and export oysters, shrimp, fish, fruit and vegetables; to buy, operate and run boats and seines necessary to catch said shrimp, oysters and fish, and generally to do and engage in any business or enterprise connected with, growing out of, or incidental to the objects and purposes hereinbefore set forth or contemplated by this charter.

Article 5

All the corporate powers of this company shall be vested in and exercised by a board of directors to be composed of three stockholders, a majority of whom shall constitute a quorum for the transaction of all business. The directors shall be elected annually by ballot of the stockholders on the first Monday of July of each year. Each stockholder shall be entitled to one vote for every share of stock owned by him and standing in his name on the books of

the company at least thirty days prior to such election. All elections shall be held under such rules and regulations as may be determined by the board of directors, but after at least ten days' notice of such election shall have been given to each stockholder, either by publication in one of the daily newspapers published in the city of New Orleans, or by notice addressed to each stockholder at his last known address. The directors thus elected shall continue in office for one year, or until their successors shall have been duly elected and qualified. No failure to elect shall be considered as a forfeiture of this charter. Any vacancy occurring on said board shall be filled by the remaining directors for the unexpired term.

Said board of directors shall, at its first meeting, elect from among its own number a president, a vice-president and a treasurer. They shall also elect a secretary. It may combine the office of the secretary and treasurer, and may even elect a secretary, who need not be a stockholder.

Article 6

No stockholder shall ever be held liable or responsible for the contracts, faults or debts of this corporation, nor shall any mere formality in its organization have the effect of rendering this charter null or of exposing a stockholder to any further liability than the unpaid balance due on the shares of stock owned by him.

[fol. 40] Article 7

This act of incorporation may be changed, modified or altered or this corporation may be dissolved with the assent of the stockholders owning two-thirds of the stock present or represented at a general meeting convened for that purpose after at least ten days' notice shall have been given to each stockholder in the manner above set forth.

In the event of the dissolution of this corporation, either by the expiration of its charter or otherwise, its affairs shall be liquidated by two commissioners to be appointed at the meeting which decides to liquidate. In case of the death or inability of any one of said commissioners, the survivor shall appoint a successor to him.

Article 9

Until the election to be held in July 1904, the following named stockholders shall constitute the first board of directors, viz: Henry E. Gamble, S. Gumbel and I. Rothschild, with the said Hy. E. Gamble as president, S. Gumbel as vice-president, and I. Rothschild as secretary and treasurer.

Thus done and passed at my office in the city of New Orleans, on the day, month and year herein first above written, in the presence of Fred H. Dumm and Frank Wm. Hart competent witnesses, who have hereunto signed their names with the said appearers and me, Notary, after due reading of the whole.

(Original Signed.)

Henry E. Gamble, Jos Shaw. I. Rothschild, Jos Shaw, By Hy. E. Gamble. S. Gumbel, Jos Shaw, By By. E. Gamble. Witnesses: Fred H. Dumm, Frank Wm. Hart. Gustaf A. Wiedfeldt, Jr., Notary Public.

I, the undersigned Recorder of Mortgages, in and for the Parish of Orleans, State of Louisiana, do hereby certify that the above and foregoing act of incorporation of the Sea Food Company was this day duly recorded in my office in Book 1008, Folio 324.

New Orleans, La., June 20th, 1911.

A true copy from the original act.

(Signed) Emile J. Lamport. Gustaf A. Wiedfeldt, Jr., Notary Public.

[Vol. 42] Decree in Condemnation

State of Louisiana,
County of Harrison,
City of Biloxi.

It is agreed by and between L. O. Johnson, Jr., trading as the Johnson Fish & Oyster Company, hereinafter referred to as the first party, and the Sea Food Company, a corporation under the laws of the State of Louisiana, acting herein by A. B. Rothschild, its duly authorized secretary

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In the Supreme Court of the United States

No. 768.

Foster Fountain Packing Co., Inc., and Sea Food Company, Appellants,

vs.

E. J. Haydel, Fred Schouest, L. R. Cabriac et al.

SPECIFICATION OF ASSIGNED ERRORS AS ARE INTENDED TO BE URGED.

The appellants, at the hearing of this cause, will present to the Court as grounds for review the following assigned errors:

(1) The Court erred in denying the appellants' application for an interlocutory injunction.

(2) The Court erred in recalling the temorary restraining order granted by E. R. Holmes, District Judge.

(3) The Court erred in not granting the interlocutory injunction to the appellants on the application therefor, and in holding that the appellants were not entitled to an interlocutory injunction on their said application.

(4) The Court erred in not retaining the restraining order issued by the said E. R. Holmes, District Judge.

(5) The Court erred in holding that the appellants were not entitled to the interlocutory injunction applied for.

In support of said assignments of error, the appellants will present to the Court, and rely upon for reversal of the decree appealed from, the points designated and printed in the record, Tr. 146.

No. 769.

L. O. Johnson, Jr., and Sea Food Company, Tanas Hebert et al., Appellants,

vs.

E. J. Haydel, Fred Schouest, L. R. Cabriac et al.

SPECIFICATION OF ASSIGNED ERRORS AS ARE INTENDED TO BE URGED.

The appellants, at the hearing of this cause, will present to the Court as grounds for review the following assigned errors:

(1) The Court erred in denying the appellants' application for an interlocutory injunction.

(2) The Court erred in recalling the temporary restraining order granted by E. R. Holmes, District Judge.

(3) The Court erred in not granting the interlocutory injunction to the appellants on the application therefor, and in holding that the appellants were not entitled to an interlocutory injunction on their said application.

(4) The Court erred in not retaining the restraining order issued by the said E. R. Holmes, District Judge.

(5) The Court erred in holding that the appellants were not entitled to the interlocutory injunction applied for.

In support of said assignments of error, the appellants will present to the Court, and rely upon for reversal of the decree appealed from, the points designated and printed in the record, Tr. 96.

No. 768

Foster Fountain Packing Company, Inc., and Sea Food Company, Appellants,

vs.

E. J. Haydel, Fred Schouest, L. B. Cabriac et al.

STATEMENT GROUNDS OF JURISDICTION

The original bill of complaint was filed in the district court of the United States for the eastern district of Louisiana, for the purpose of enjoining and restraining the defendants who are officers of the state of Louisiana, charged with the enforcement of Act 103 passed by the legislature of the state of Louisiana, approved July 8, 1926, hereinafter referred to as the "Shrimp Act," from enforcing the same, it being charged in the original bill of complaint that said act, as well as certain specific sections thereof, violated paragraph 3 subdivision 8 article 1 of the constitution of the United States, conferring upon Congress the exclusive power to regulate commerce; also paragraph 2 of article 6 providing that the constitution and laws of the United States shall be the supreme law of the land; article 1 of the fourteenth amendment to the constitution of the United States, providing that no state shall deprive any person of liberty or property without due process of law, nor deny to any person the equal protection of the laws. (Tr. 1-18).

The object of the suit was to enjoin the defendants who were charged under the act with its enforcement from arresting the complainants, their agents, servants, and employees, and from seizing and taking into custody and confiscating their boats and equipment used in transporting shrimp in interstate commerce from the state of Louisiana into the state of Mississippi.

A temporary restraining order was granted (Tr. 34). An application for interlocutory injunction was made, and a court composed of three judges, denied complainants' application for an interlocutory injunction pending the hearing, and recalling the temporary restraining order. This order was dated Dec. 27, 1927 (Tr. 138). A petition for appeal from said order was filed to this court, and decree signed by said three judges was granted allowing the same, upon the 3rd day of January, 1928 (Tr. 138-140).

The appeal was perfected and assignment of error filed (Tr. 140). Statement of points relied on for appellants will be found Tr. 146. This appeal is prosecuted from the decree of the three-judge court to this court under section 380 U. S. C. A., being section 266 Judicial Code, as amended Feb. 13, 1925. The material portion of the act being in the following language:

> "Par. 380 (Judicial Code, section 266, amended). Same; alleged unconstitutionality of State statutes; appeal to Supreme Court. No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a state by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either cir-

cuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: *Provided, however,* That one of such three judges shall be a justice of the Supreme Court, or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the State, and to such other persons as may be defendants in the suit: *Provided,* That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case."

The following are pertinent authorities:

Cumberland Tel. & Tel. Co. v. Louisiana Public Service Commission, 260 U. S. 212, 67 L. ed. 217;
L. & N. Ry. Co. v. Garrett, 231 U. S. 298, 58 L. ed. 229.
Ex Parte Water Co., 220 U. S. 539, 55 L. ed. 575;
Raich v. Traux, 239 U. S. 33, 60 L. ed. 131;

Loone v. Crane, 245 U. S. 178, 62 L. ed. 230;
Pendergast v. Telephone Co., 262 U. S. 43, 67 L. ed. 853;
Van Dyke v. Geary, 244 U. S. 39, 61 L. ed. 973;
Oklahoma Natural Gas. Co. v. Russell, 261 U. S. 291, 67 L. ed. 659.

While the question is not necessarily involved on this appeal, the right of the three-judge court upon denying the application for an interlocutory injunction is an inherent power not dependent upon any rule or statute where it is necessary to prevent irreparable harm and injury to preserve the status pending the appeal. *Cumberland Tel. & Tel. Co. v. Louisiana Public Service Commission*, 260 U. S. 212, 67 L. ed. 217; *Terminal R. R. Ass'n v. U. S. of America*, 266 U. S. 17, 69 L. ed. 150; *Chicago Great Western Ry. Co. v. Kendall*, 266 U. S. 94, 69 L. ed. 183.

The three-judge court definitely adjudicated in this case that irreparable harm and injury would be sustained unless the restraining order was retained pending the appeal. The decree allowing the appeal contains the following language: (Tr. 139).

> "It is ordered, adjudged and decreed that said appeal be and is hereby allowed; and it appearing to the Court that the complainants will sustain irreparable harm and damage, it is ordered, adjudged and decreed that, pending the appeal from the decree in said cause to the Supreme Court of the United States, that portion of the decree appealed from withdrawing the temporary restraining order heretofore issued, as aforesaid, be and is hereby revoked, suspended and set aside, and said restraining order be and is hereby retained pending the hearing and determination of said cause on appeal before the Supreme Court of the United States, provided the complainants shall execute and file in this cause a bond to be approved by the Clerk of this Court in the penal sum of $2,000.00 payable to the State of Louisiana, conditioned as provided by law."

No. 769.

I. O. Johnson, Jr., and Sea Food Company, Tanas Hebert et al., Appellants,

vs.

E. J. Haydel, Fred Schouest, L. R. Cabriac, et al.

STATEMENT GROUNDS OF JURISDICTION

The original bill of complaint alleged that the defendants are officers of the state of Louisiana, charged with the enforcement of Act 258 known as the "Oyster Act," passed by the legislature of the state of Louisiana, approved July 14, 1926. That the act was in conflict with the constitution of the United States in the several particulars set out in the bill of complaint, to-wit, the commerce clause of the constitution of the United States; also paragraph 2 article 6 of the constitution of the United States, providing that the constitution of the United States and the laws thereof should be the supreme law of the land; the fourteenth amendment to the constitution of the United States prohibiting any state from depriving any person of life or property without due process of law, and prohibiting a state from denying any person the equal protection of the law (Tr. 1-21).

A temporary restraining order was granted (Tr. 34); application made for interlocutory injunction (Tr. 36). A three-judge court, which was duly organized on the hearing of the application for the interlocutory injunction, denied the application and recalled the temporary restraining order (Tr. 90). This order was dated Jan. 26, 1928. Petition for appeal was filed; an order allowing appeal to this court was granted, and the status quo preserved pending the appeal. The order is dated Jan. 26, 1928, signed by the three judges (Tr. 91-92). The appeal was perfected; assignment of error will be found Tr. 93, and statement of points relied on by plaintiffs

in error will be found Tr. 96. This appeal is prosecuted from the decree of the three-judge court to this court under section 380 U. S. C. A., being section 266 Judicial Code as amended Feb. 13, 1925, the material portion of the act being in the following language:

> "Par. 380 (Judicial Code, section 266, amended). Same; alleged unconstitutionality of State statutes; appeal to Supreme Court. No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a state by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his asistance to hear and determine the application two other judges: *Provided, however,* That one of such three judges shall be a justice of the Supreme Court, or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general

of the State, and to such other persons as may be defendants in the suit: *Provided,* That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case."

The following are pertinent authorities:

Cumberland Tel. & Tel. Co. v. Louisiana Public Service Commission 260, U. S. 212, 67 L. ed. 217; *L. & N. Ry. vs. Garrett,* 231 U. S. 298, 58 L. ed. 229; *Ex Parte Water Co.* 220 U. S. 539, 55 L. ed. 575; *Raich & Traux,* 239 U. S. 33, 60 L. ed. 131; *Loone v. Crane,* 245 U. S. 178, 62 L. ed. 230; *Pendergast v. Tel. Co.* 262 U. S. 43, 67 L. ed. 853; *Van Dyke v. Geary,* 244 U. S. 39, 61 L. ed. 973; *Oklahoma Natural Gas Co. v. Russell,* 261 U. S. 291, 67 L. ed. 659.

While the question is not necessarily involved on this appeal, the right of the three-judge court upon denying the application for an interlocutory injunction is an inherent power not dependent upon any rule or statute where it is necessary to prevent irreparable harm and injury to preserve the status pending the appeal. *Cum-*

berland Tel. & Tel. Co. v. Louisiana Public Service Commission, 260 U. S. 212, 67 L. ed. 217; *Terminal R. R. Assn. v. U. S. of America,* 266 U. S. 17, 69 L. ed. 150; *Chicago Great Western Ry Co. v Kendall,* 266 U. S. 94, 69 L. ed. 183.

The three-judge court definitely adjudicated in this case that irreparable harm and injury would be sustained unless the restraining order was retained pending appeal to this court. The decree allowing the appeal contains the following language:

> "and it appearing to the Court that the complainants will sustain irreparable harm and damage, it is ordered, adjudged and decreed that, pending the appeal from the decree in said cause to the Supreme Court of the United States, that portion of the decree appealed from, withdrawing the temporary restraining order heretofore issued, as aforesaid, be and is hereby revoked, suspended and set aside, and restraining order be and is hereby retained pending the hearing and determination of said cause on appeal before the Supreme Court of the United States, provided the complainants shall execute and file in this cause a bond to be approved by the Clerk of this Court, in the penal sum of Ten Thousand Dollars payable to the State of Louisiana, conditioned as provided by law.
>
> "Ordered, adjudged and decreed, this the 26th day of Jan., 1928."

Foster-Fountain Packing Company Et Al.

v.

E. J. Haydel Et Al.

No. 768.

STATEMENT OF FACTS

This suit was begun in the United States District Court for the Eastern District at New Orleans, Louisiana, by Foster-Fountain & Company, Incorporated, a Louisiana corporation, and the Sea Food Company, a Mississippi corporation, by an original bill in equity filed in said court, wherein E. J. Haydel and several other adult defendants, all residents of the said Eastern District of Louisiana, were made defendants. (R. p. 1)

The defendants constitute the enforcement officers of the Louisiana Conservation Commission charged especially with the enforcement of the laws hereinafter complained of, and also the Attorney General, the District Attorney and Sheriffs of the Parishes of St. Bernard and Plaquemine in the state of Louisiana.

The bill of complaint which is found at pages 1 to 18 claimed the jurisdiction of a Court of Equity of the United States on account of threatened, irreparable harm, injury and damage and in a matter wherein the amount involved was over three thousand dollars and was a controversy arising over the Constitution and Laws of the United States, and specifically all that part of the constitution and laws of the United States as is set out in the bill of complaint on pages 2 and 3 of the Record.

It charged that sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of Act 103 passed by the Legislature of the State of Louisiana, and approved July 8th, 1926, are in con-

travention of the Constitution of the United States, and in support of this proposition set up: that the Sea Food Company is engaged in the catching, canning and packing of shrimp at Biloxi, Mississippi. The shrimp after being caught are sold in Interstate Commerce to all parts of the United States and are exported to England, France and Germany. That these shrimp are used as a food in all parts of the United States, their chief value arises after being packed and shipped in Interstate Commerce to all parts of the country where sea food cannot be obtained in the raw state. That this business is centered around Biloxi, there being over twenty plants engaged in the packing of shrimp at Biloxi, employing a thousand men and over three or four thousand women and children, there being dependent on this business over two thousand families, and the value of one hundred and sixty-six thousand cases of shrimp packed being worth approximately one million dollars. That on account of the peculiar situation of Biloxi with reference to topographical and climatic conditions, community life, etc., it is splendidly adapted to this industry, and that the Sea Food Company is one of the largest packing plants at Biloxi. (R. p. 5.)

That shrimp are a migratory fish, whose real home is unknown, they being found all over the waters of the Gulf of Mexico, and it being impossible to tell exactly where they breed, whether near the shore or outside waters, but it is known they are found in unlimited numbers in the waters of the State of Louisiana west of the channel of Pearl River. That this territory includes that part of the State of Louisiana which lies south of Orleans Parish and Lake Ponchatrain, west of Pearl River, north of Chandeleur Islands, and east of the Mississippi River, and embracing the Parishes of Plaquemine and St. Bernard. That these Parishes except for a small belt of high land along the bank of the Mississippi River are composed almost entirely of low marshes through which innumerable bayous, lakes and lagoons run. That the waters of the State of Mississippi, although ly-

ing adjacent to these waters, for reasons unknown to the complainant, are not the place of habitation of large quantities of shrimp, and for this reason the Sea Food Company and other persons are largely dependent upon shrimp caught from the waters of the State of Louisiana east of the Mississippi River.

That the common method of catching shrimp is for small boats equipped with trawls to go out into the marshes and into the Gulf of Mexico and by means of a net, called a trawl, to catch these shrimp, which are then sold or deposited upon a larger boat, which in turn takes the shrimp to Biloxi where they are cleaned, cooked and packed in cans and thereafter being shipped to all parts of the world. (R. p. 6-7). That in canning the shrimp only the tail is used, in most cases the heads and hulls of the shrimp being thrown into the waters, but that a small amount of the heads and hulls are dried producing what is called "Shrimp Bran," which is used to a small extent as a fertilizer. That the only plant in the State of Louisiana or Mississippi which uses the "shrimp bran" is located at Biloxi, Mississippi. That although the shrimp are caught in Louisiana, on account of the climatic conditions and other conditions prevailing in the eastern part of Louisiana, very few shrimp are canned in that territory.

That the Foster-Fountain Company is engaged in the catching and packing and canning of salt water shrimp. That it operates a hulling plant on the west bank of the Pearl River of the State of Louisiana, near Perlington, Mississippi, and has contracted to sell, transport and deliver to the complainant Sea Food Company during the packing season of 1927-1928 one car load of shrimp per month and to sell and convey to the Sea Food Company at Biloxi a certain number of barrels of shrimp per month. (R. p. 7.)

That the Sea Food Company and the Foster-Fountain Company have a large plant equipment of the approximate value of one hundred and fifty thousand dollars and employ a large number of men and women, and unless the supply of shrimp under the terms of the contract attached to the bill of complaint can be obtained its business will be destroyed, its plant rendered valueless and its employees thrown out of employment, and that the Foster-Fountain Company will acquire or catch strictly in accordance with the terms of the statute referred to in the bill of complaint shrimp to comply with said contract, and has already complied and is willing to comply therewith, the contract being attached to the bill of complaint as exhibit "A."

That the State of Louisiana threatens to interfere with the performance of this contract and to prosecute the Foster-Fountain Company, its agents, servants and employees and to seize and confiscate its property if it should perform its contract, and threatens to prosecute the Sea Food Company, its agents, servants and employees if it shall within the State of Louisiana accept compliance with any part of the contract. That the part of said Act complained of is as follows:

> "Section 4. That the right to take salt water shrimp from the waters of this State and the right to can, pack or dry the said shrimp when caught are hereby granted to any resident of this State, to any firm or association composed of residents of this State, or to any corporation domiciled in or organized under the laws of this State, operating a canning or packing factory or drying platform in this State. These rights shall be confined to such persons and corporations and are granted subject to the further conditions hereinafter stipulated. It shall be unlawful for any person not a resident of this State, or for any firm or association not composed of residents of this State, or for any corporation

not domiciled in or incorporated under the laws of this State to catch salt water shrimp in the waters of this State, or to can, pack or dry in any factory or on any platform in this State, any salt water shrimp caught from the waters of this State; any person, firm or corporation so violating the provisions of this Section shall be liable to the penalities hereinafter provided."

That Section 10 of said Act provides a license tax on seines and trawls; that Section 12 provides a severance tax on shrimp; that Section 13 of said Act is in the following language:

"Section 13. All salt water shrimp and the shells or hulls and heads of all salt water shrimp are hereby declared to be the property of the State, and the shells or hulls and heads to be valuable for use as a natural resource of the State as a fertilizer in the State; and it shall therefore and hereafter be unlawful to export from the State of Louisiana any salt water shrimp from which the shell or hull and head shall not have been removed.

In order that all of these inhabitants of the State of Louisiana may enjoy the State's natural food product, it shall be lawful to ship unshelled shrimp from any point in the State of Louisiana to any other point in the State of Louisiana for edible consumption, subject to such regulations and restrictions as may be imposed by the Department of Conservation. Any person firm or corporation of this State who shall lawfully take any shrimp from any of the waters of the State or lawfully acquire the same, shall have a qualified interest or property in the shrimp so taken or acquired in the shells, which qualified interest may be sold or transferred to any other person, firm or corporation within the limits of the State; and after the edible portion of the abdomen popularly called tail meat of said

shrimp shall have been removed from the shell within the State of Louisiana, such lawful taker or possessor, his heirs or assigns, as the case may be, shall be vested with all of the rights and property of the State in and to said shrimp tail meat and shall have the right to sell such shrimp tail meat or ship the same beyond the limits of the State, without restriction or reservation."

That Sections 14, 15 and 16 provide for taxes and licenses; that Section 19 provides certain penalities for a violation of said Act, said Section 19 being in words and figures as follows, to wit:

"Section 19. That any person, firm or corporation or common carrier, their agents and officers violating any of the provisions of this Act, where a punishment has not been otherwise provided shall be guilty of a misdemeanor and shall on conviction thereof be fined not less than twenty five dollars ($25.00) or not more than one hundred dollars ($100.00) for the first offense, nor less than one hundred dollars ($100.00) nor more than two hundred dollars ($200.00) for the second offense and for the third offense the fine shall not be less than one hundred dollars ($100.00) nor more than two hundred dollars ($200.00) and in addition the license under which operations are being conducted shall be revoked. For each offense the courts may impose a sentence in the parish jail for not less than five days nor more than thirty days, or may impose both fine and imprisonment at the discretion of the court for each offense; and in addition thereto the boats, seines or other devices used in such violation may be confiscated by order of the Court.

Vessels, their tackle and apparatus, used in illegal taking of salt water shrimp from the waters of the State, or used in the illegal transportation of salt water shrimp taken from the waters of this

State, shall be seized and taken in to possession by the officers or inspectors of the Department of Conservation charged with the enforcement of the conservation laws, shall be delivered to the Sheriff of the Parish wherein the violation of the law occurred the Sheriff being authorized to permit the release of the said vessel from seizure upon the owner thereof furnishing a bond satisfactory to the Judge of the District Court having jurisdiction providing for the return of such vessel and its apparel and apparatus to abide the judgment of the court. Such vessel shall be liable to forfeiture upon proceedings being instituted to that end by the District Attorney having jurisdiction, and the Judge of the District Court having jurisdiction shall be authorized to decree the forfeiture of such vessel shall be sold at public auction by the Sheriff having jurisdiction and the proceeds of the sale of said vessel, its apparel and apparatus, less the cost of the seizure, keeping and sale, shall be paid into the State Treasury to the credit of the Department of Conservation. Any person, firm or corporation found guilty by the court of violating the provisions of this law prohibiting the exportation of salt water shrimp from the State, unless and until the hull or shell and head shall have been previously removed therefrom within this State shall be liable to a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1000.00) or to imprisonment of not less than six months (6) nor more than one Year and shall be liable to both fine and imprisonment in the discretion of the Court."

The bill of complaint shows that section 4 of the Acts violates the 14th Amendment of the Constitution of the United States, for the reason that while the Foster-Fountain Company operates a hulling plant in the State of Louisiana and is a corporation organized and domiciled in the State of Louisiana, it still is un-

able to catch shrimp from the waters of the State of Louisiana, because they do not operate a canning or packing property or drying platform in the State of Louisiana, that the right to catch shrimp in the waters of the State of Louisiana is given only to such corporations as own a canning or packing plant or drying platform in said State. That therefore the said complainants are denied the rights and immunities as citizens and the equal protection of the law and are deprived of their property without due process of law. That it would be a great hardship on the Foster-Fountain Company to operate a canning or packing plant in the State of Louisiana, and the same could only be operated at a great loss. (R. p. 12.)

Further, that Section 13 of the Act attempts to compel the Foster-Fountain Company to pack shrimp in Louisiana at a loss to themselves as a condition precedent to their making and filling contracts in Interstate Commerce, and further that the said law violates other sections of the constitution of the United States and the constitution of the State of Louisiana, as shown on p. 13 of the Record.

The bill of complaint further shows that only a negligible quantity of the hulls of shrimp to be conserved under the provisions of said Act are so conserved, and that this portion so conserved is made into "shrimp bran," a fertilizer which is shipped out of the State in Interstate Commerce, and that all of the tails of the shrimp are packed and shipped out of the State in Interstate Commerce, so that the only purpose of the Act is to compel the cleaning and canning of the shrimp in the State of Louisiana. That these shrimp are made the subject of barter and sale in the State of Louisiana, and that the complainant has an opportunity to purchase shrimp from citizens of the State of Louisiana who can lawfully acquire the same. That thereby the complainant can acquire a sufficient amount of shrimp to fulfill its contract and keep its plant in opera-

tion. (R. p. 15). But the officers of the State of Louisiana charged with the enforcement of this law are patrolling the waters of the State of Louisiana threatening to arrest any and all persons violating the said law and to seize and confiscate the boats of complainant if complainant endeavor to ship shrimp to its factory at Biloxi, Mississippi, and thereby complainants are unable to carry out their contract or to operate their business at a profit. (R. p. 15). That thereby the complainants are denied certain constitutional rights set out on pages 15 and 16 of the Record, and that the manner of the enforcement of the law is in contravention of certain sections of the constitution of the United States, shown at page 16 of the Record, for the reason that in the enforcement of the law persons residing in Louisiana who are engaged in shipping out what is known as raw shrimp do so with the full knowledge of the officers of the law charged with the enforcement of the Act, that those persons are shipping said shrimp out of the State for the purpose of being consumed in the raw state, and that the law is intended and sought and intended to be enforced against corporations like the complainant, packing or canning shrimp outside of the State of Louisiana, and is not intended to be enforced against persons shipping raw shrimp from the State of Louisiana in a headless condition for the purpose of being used in homes, restaurants, etc., and said persons are so violating said law with the knowledge of the enforcement officers of the State of Louisiana, its violation being permitted under the guise that these shrimp are caught without the jurisdicion of the State of Louisiana.

The bill of complaint further shows that the parties defendants are officers and agents for the Conservation Department of the State of Louisiana and the Parishes of St Bernard and Plaquemine charged with the enforcement of the general laws of the State of Louisiana, including the Attorney General of the State of Louisiana, and while denying that any part of the

law complained of is valid, complainants expressly offer to pay all taxes, licenses, whether severance taxes or otherwise, on shrimp caught by them, and generally offer to do equity as required by the court.

The bill concludes with the prayer that a temporary restraining order issue and that a Statutory Court of three Judges be formed, and that upon a hearing pending the final hearing a temporary injunction issue, and that upon the final hearing this injunction be made permanent, and for other and general relief fully set out and requested, as found on page 18 of the Record, which bill of complaint is duly signed by the solicitors of record and sworn to by the proper officers of both complainant companies, exhibiting as an exhibit thereto the contract and the full complete Act complained of, the contract being found at page 19 of the Record, and the law complained of being found at pages 20 to 34 of the Record.

The Presiding Judge of the Eastern District of the State of Louisiana being necessarily out of his jurisdiction, this bill of complaint was presented to the Honorable E. R. Holmes, who on the 6th day of September, 1927, granted a temporary restraining order and constituted a Statutory Court of three judges, composed of the Honorable Rufus E. Foster, Circuit Judge, Louis H. Burns, and E. R. Holmes, District Judges. (R. p. 34).

Thereafter a motion was made for a permanent injunction pending the hearing of this cause. (R. p. 36).

There was filed in opposition to the bill of complaint and motion a plea of estoppel, which set up that the parties had agreed to comply with the provisions of the law of the State of Louisiana complained of when they had obtained certain licenses requested from the State of Louisiana, which are all set out as exhibits to its plea of estoppel. (R. p. 38 to 53).

At the hearing of the motion for an injunction pending the final hearing of said cause, the complainants offered proof in the form of numerous affidavits substantiating fully each and every allegation of the bill of complaint, these affidavits being the affidavit of L. O. Johnson, Jr., and R. Hart Chinn (R. p. 54), affidavit of Louis Braun (R. p. 58), Tony Guerra and several other Louisiana fishermen (R. p. 60), affidavit of L. O. Johnson (R. p. 66), affidavit of R. H. Chinn (R. p. 67), affidavit of W. L. Guice (R. p. 69), affidavit of R. H. Chinn (R. p. 69), affidavit of L. O. Johnson (R. p. 71), affidavit of Ernest Desporte (R. p. 77), affidavit of O. G. Swetman (R. p. 83), affidavit of C. B. Foster (R. p. 85), affidavit of Victor Ellis (R. p. 86), affidavit of R. Hart Chinn (R. p 87), affidavit of Oscar Oliver (R. p. 94), affidavit of Lewis Garlotte (R. p. 95), affidavit of A. R. Heidenheim (R. p. 97), affidavit of L. G. Moore (R. p. 97), affidavit of E. C. Tonsmeire (R. p. 98), affidavit of Tony Williams (R. p. 100), affidavit of R. Hart Chinn (R. p. 101), affidavit of Alex Misticos (R. p. 103), affidavit of Alex Misticos (R. p. 104), affidavit of R. Hart Chinn (R. p. 104), affidavit of Donald W. Howe (R. p. 106), affidavit of L. J. Folse (R. p. 106), all of which affidavits taken as a whole show proof of the following facts:

That shrimp have been packed along the Mississippi Gulf Coast for about fifty years, this business having grown from a small beginning to the business of employing thousands of persons and brings in approximately one million dollars of wealth per year. That numerous fishermen of Louisiana and Mississippi catch raw products in the waters of Louisiana and bring the same into Biloxi for canning purposes. That in Biloxi are operated numerous canneries which are engaged in this business, a large number being operated by people who are citizens of the State of Louisiana, the reason for the canneries being located in Biloxi is that in the packing of shrimp it is necessary that a large and plentiful supply of pure water be had, that also decent and healthy

living conditions be had for those persons engaged in carrying on the business. That not only is pure water found in large quantities in Biloxi by having a large supply of artesian water, but the living conditions are such that numbers of persons are attracted there which furnish a large labor supply at any time needed, and that these persons have been engaged in such business for a long period of time, they have become expert and create an asset of great value to persons engaged in the operation of canning factories. That the opposite condition prevails in that portion of Louisiana which lies east of the Mississippi and west of Pearl River. That in this territory it is impossible to find a proper supply of pure water and a large labor supply is negligible and living conditions are such that it is impossible to get the required labor to live in this territory to successfully operate canning plants. That the shrimp after being caught are either shipped raw to different parts of the United States after the heads have been removed, or wholly cleaned by removing all of the heads and hides, and are cooked and placed in cans and shipped in Interstate Commerce to all parts of the United States. That very few of the shrimp are ever used for local consumption, and that the sole purpose of the catching of the shrimp is that the same shall be used in Interstate Commerce. That these shrimp are caught by citizens of Louisiana and Mississippi and are sold indiscriminately upon the open market that exists upon the waters of the State of Louisiana to the highest purchaser, and that by reason of the competition from factories in Mississippi the native catchers in Louisiana are able to secure higher prices for the product and for their labor than were this competition removed. That the sole purpose of the Act complained of would be to cause a removal of the factories situated at Biloxi to certain parts of Louisiana, where they would be compelled to operate at a great disadvantage and loss to themselves. That this loss could only be recouped by an addition to the price of shrimp which would be in effect a burden that would be felt in all parts of the United States in the price of shrimp

sold to consumers generally. That the requirements that the hulls and heads of the shrimp be conserved is simply a subterfuge to compel the packing of shrimp in Louisiana, for the reason that in most instances these hulls are not conserved but are thrown into the bays and bayous of the State and constitute a serious health menace in the localities where they are deposited. That while shrimp hulls have some small fertilizer value, its value is negligible, in fact the entire value for fertilizer purposes of shrimp hulls is less than one per cent of the value of the canned article packed in Louisiana and Mississippi, and although some small parts of these hulls and heads are steamed and baked and converted into "shrimp bran," that this "shrimp bran" is not used for fertilizer in the State of Louisiana in its natural state, it being disagreeable when used in its natural state, but is exported from the State of Louisiana to Biloxi where it is used as a component part of fertilizer by a firm manufacturing fertilizer at Biloxi. The proof further showed that numerous persons operating canning factories in Louisiana were unable to give away these heads and hulls and they constituted a serious menace to those persons engaged in this business. That all of the manufactured article, that is the tail of the shrimp, after being placed in cans, and the heads and hulls after being made into fertilizer were shipped in Interstate Commerce from Louisiana to other states and there was no pretense of the same being necessary or being used by the people of the State of Louisiana as a food supply. The proof further showed that boats of the Conservation Department of the State of Louisiana were patrolling the waters in Louisiana preventing any persons who desire to take shrimp from said waters to the State of Mississippi for the purpose of being cannned, but that although this rigorous enforcement was taking place on the waters of said state that large quantities of shrimp were being shipped from the State of Louisiana to other states of the Union to be used in the raw state, that is to be used in restaurants, hotels and homes for salads, etc. (See affidavit of L. J. Folse

R. p. 106). That this business had grown to be a considerable business and was increasing in size, the shrimp being shipped out in car load lots without any effort being made by the State officials of Louisiana to prevent the shipment. That although these shrimp were claimed to be from outside the waters of the State and without the purview of the Shrimp Act, that no such shrimp in the knowledge of ten Louisiana fishermen were being caught in the State of Louisiana. (See affidavit of Tony Guerra and others, p. 60 to 66 of Record).

That the amount involved in controversy was over three thousand dollars and that the contract set out in the bill of complaint had been duly and legally entered into between the parties, which contract was prevented from being carried out on account of the enforcement of the said law.

The proof further showed that the law was a subterfuge enacted from its inception simply for the purpose of compelling the removal of those persons engaged in the canning of shrimp from the State of Mississippi to the State of Louisiana, but although the complainant in this case, Foster-Fountain Company was a Louisiana corporation domiciled in Louisiana, that it was cheaper for it to engage in and operate its business in Biloxi than it would be to operate and engage in its business in the State of Louisiana, and for this reason Biloxi had been adopted as a point to operate its business. That this business could only be operated in Louisiana at a great loss to itself. (R. p. 59 and R. p. 54).

The proof is further overwhelming that the heads and hulls of the shrimp are almost valueless, and there is no denial that these heads and hulls are shipped out of the State in Interstate Commerce after being manufactured into "shrimp bran," and that any effort to comply with the law on the part of the complainants would entail a great loss upon themselves and would be a serious and direct burden upon Interstate Commerce.

In rebuttal of these affidavits, the defendants offered the affidavit of Stanley C. Arthur (R. p. 117) showing certain views he took of firms manufacturing "shrimp bran," and the affidavit of John Dymond, Jr., one of the attorneys for the defendant (R. p. 118) showing that certain agreements were entered into by persons supposed to represent the complainants when the Act complained of was passed by the Legislature of the State of Louisiana, and that factories could find sites in the Parishes of St. Bernard and Plaquemine, and that certain persons have acquired plants in Louisiana and that the complainants could acquire a plant in Louisiana; and also the affidavit of one Charles F. Greiner, (R. p. 124), who shows that in nine years he has manufactured twenty-six thousand dollars of "shrimp bran," all of which was shipped out of the State; the affidavit of one Raymond L. Colson, (R. p. 127), who shows that he purchased "shrimp bran" to the extent of thirty thousand dollars in one year, which bran was used by him in Mississippi in the manufacture of fertilizer. (R. p. 128); also the affidavit of James V. Dunbar (R. p. 129) which shows that in three years his company made $6,630.00 of shrimp bran, and that he has a canning plant at Biloxi which he is willing to move to Louisiana, and that the bran manufactured by him is shipped out of the State in Interstate Commerce; and also the affidavit of Dr. L. H. Jastremski (R. p. 131) which shows he manufactures and sells "shrimp bran." All of which affidavits fail to contain any material denial of the allegation that all of the component parts of the shrimp caught in Louisiana after being manufactured are shipped out of the State in Interstate Commerce or that this "shrimp bran" is of any value to the people of Louisiana as a food supply or fertilizer supply and is being conserved for their benefit or that the shrimp themselves are valuable to the people of the State of Louisiana as a food supply and is being conserved for their benefit, but these affidavits do show that shrimp can be caught and shipped from Louisiana in unlimited quantities and that the heads and hulls of these shrimp can be manufactured

into bran and shipped from Louisiana in unlimited quantities. That the sole benefit to be gained from enforcement of the act would be to compel the manufacture of these shrimp and this bran in Louisiana, nor is anything in the testimony produced by the defendant to show that there is any material effort being made by the State of Louisiana to prevent shipment by raw dealers of headless shrimp to all parts of the world, nor is there any denial in the affidavits that the attempt to ship these shrimp from the State of Louisiana to the State of Mississippi is being prevented and this section of the law is rigorously enforced. And we also call the Court's attention to the bill of complaint where an offer is made to return to the State of Louisiana by the complainant, at any point designated by the Conservation Commission, all heads and hulls of shrimp caught by the complainant.

After the final hearing was had by the Court, a decree was rendered without any written opinion by the Court or any finding of fact on the allegations of the bill of complaint denying the injunction and recalling the temporary restraining order (R. p. 138), but upon petition for appeal being presented to this Court (R. p. 138) such appeal to this court was allowed (R. p. 139) with a supersedeas from that part of the decree withdrawing the temporary restraining order, and assignment of error (R. p. 140) and bond required and decree allowing appeal having been filed (R. p. 141) this case is here on direct appeal from the decision of Statutory Court below refusing to grant the relief prayed for in the bill of complaint, that is, refusing to grant the temporary injunction prayed for therein.

No. 769.

L. O. Johnson, Jr., et al,

vs.

E. J. Haydel, et al.

STATEMENT OF FACTS

This is an original action begun in the District Court of the United States for the Eastern District of Louisiana by L. O. Johnson, an adult resident of Biloxi, Harrison County, Mississippi, and the Sea Food Company, a Louisiana corporation, organized under the laws of the State of Louisiana and domiciled and having an office and place of business in the City of New Orleans, Louisiana. The bill made defendants Louis A. Mereaux, Sheriff of St. Bernard Parish in the State of Louisiana and certain other officials and citizens of Louisiana, all residents of said Eastern District, as will appear by the bill of complaint naming said defendants found of record on p. 1, all of said defendants being charged with the enforcement of the law complained of and generally with the enforcement of all the laws of the State of Louisiana.

The bill of complaint begun on the Equity side of said court claimed that the complainants were threatened with irreparable injury and harm and were without adequate remedy except in a court of equity for the purpose of preventing said harm as well as for the purpose of preventing a multiplicity of suits and sought an injunction and other equitable relief. The bill set up that the amount involved exceeded the sum of three thousand dollars exclusive of interest and costs, in that the complainants had entered into a contract for the purpose of the purchase and sale of oysters in shell valued greatly in excess of three thousand dollars and that they would be prevented from complying with this contract unless

the relief prayed for was obtained, and that unless such relief was obtained loss and inconvenience, etc., sustained by them would be greatly in excess of three thousand dollars.

The bill further alleged that there was a controversy between the parties complainant and defendant arising over the constitution and laws of the United States, in that the complainants claimed that sections 1, 2, 3, 4, 23 and 24 of Act 258 passed by the Legislature of the State of Louisiana, approved July 14th, 1926, and appearing in the public acts of the State of Louisiana, a copy of which being attached to the bill marked Exhibit "A," violated and are in contravention of paragraph 3, subdivision 8, article 1, of the constitution of the United States, and paragraph 2, article 6, of the constitution of the United States, and article 1 of the 14th amendment to the constitution of the United States, and article 1, section 10, of the constitution of the United States, and certain sections of the constitution of the State of Louisiana set out on pages 3 and 4 of the record.

The bill further alleges that the Sea Food Company was incorporated under the laws of the State of Louisiana for the following purposes:

> "The objects and purposes for which this corporation is organized, and the nature of the business to be carried on by it are hereby declared to be: To buy, sell, can, import and export oysters, shrimp, fish, fruit and vegetables; to buy, operate and run boats and seines necessary to catch said shrimp, oysters and fish, and generally to do and engage in any business or enterprise connected with, growing out of, or incidental to the objects and purposes hereinabove set forth or contemplated by this charter."

The whole of the charter being attached to the bill of complaint and being marked Exhibit "B."

And, further, that the said Sea Food Company has and maintains an office in the City of New Orleans, State of Louisiana, and is engaged in the oyster business at Biloxi, Harrison County, Mississippi and in the wholesale raw oyster business in the State of Mississippi and other states in the Union and generally engaged in the packing and canning and manufacturing of oysters and other by-products and shipping and selling of same in Interstate Commerce throughout the United States and foreign countires, and that the defendant L. O. Johnson is engaged in a similar business with an oyster packing plant at Biloxi with schooners and other equipment necessary to catch such oysters, the total value of said business being at least seventy five thousand dollars. (R. p. 5).

The bill of complaint further shows a history of the oyster business, that is, that this business in so far as it applies to the Gulf Coast of Mississippi and Louisiana originated by virtue of the establishment along the Gulf Coast by citizens of Maryland of canneries for the packing of oysters for shipment throughout the States of the United States. That since its establishment over fifty years ago a number of factories have sprung up in Biloxi, and Biloxi has become the center of the Southern oyster packing industry, and not only are a large quantity of oysters packed there annually but almost all of the factories in Louisiana and Mississippi now established were established by people who learned the oyster business at Biloxi. The bill further shows that the reason of the selection of Biloxi as a point of manufacturing of oysters is a physical and economical reason, in that while the State of Louisiana and other States adjacent to the State of Mississippi have a large supply of natural reefs on which oysters are grown, still these reefs are situated in the midst of a low line marshy country with poor water supply and very little of the skilled labor necessary to properly pack and can oysters, whereas Biloxi is situated on a high dry area of land enjoying a very healthy, salubrious climate, as well as an excellent water supply

and a large and expert labor supply, all of which is necessary in the packing of oysters, and, furthermore, in Louisiana no high land is found except along the banks of the Mississippi River and the way from these banks to the oyster catching region is through narrow canals, most of them privately owned. In the case of Biloxi there is a wide expanse of peaceful waters from the oyster catching regions to Biloxi, which waters do not exceed over forty miles in distance and can be traversed shortly and without interference from the private owners of any of the canals, etc. (R. p. 6). The bill further sets out the manner and method of carrying on this business, in that it is carried on by means of power boats or schooners which leave from Biloxi going into the Mississippi Sound or Louisiana marsh and dredging these oysters up by means of oyster dredges, dredging along side of the boats, or by means of tongs used from the sides of the boats or skiffs. It further shows the way in which oysters are brought into the factory and the manner and method used in and about the steaming and preparation of these oysters for canning and shipment. (R. p. 6). The bill further shows that the oysters are canned and are then shipped to all parts of the world. (R. p. 7). That while oysters are found all over the world that the largest amount of commercial oysters for canning purposes are found from Delaware to Texas in the United States of America. (R. p. 7). After going thoroughly into the whole oyster industry both with reference to the canned article as well as to the raw oysters used in shipment in its raw state to different parts of the United States (R. p. 7), the bill further shows that most of the oysters canned in Biloxi are received from that part of Louisiana lying east of the Mississippi River and north and west of the Gulf of Mexico and south of the Parish of Orleans in the State of Louisiana. That this land constitutes an area of about thirty miles wide and meanders with the shore line a distance of approximately ninety miles, and in it are situated hundreds of bays, bayous and inlets, all of which have been found agreeable to the cultivation of oysters and have been worked for this purpose for

years but still contain an inexhaustible supply of oysters which would become rank and worthless in their natural state unless yearly worked for commercial purposes. (R. p. 7). That while this territory is capable of yielding thousands of barrels of oysters per day, in the whole territory above described in the State of Louisiana there are only two small factories working, which factories under no circumstances could use over one thousand barrels of oysters per day. (R. p. 8). The bill further alleged that the oyster supply of Louisiana had been so plentiful that although the Louisiana government had created a conservation department that no steps had been taken by this department to artificially replenish the stock of oysters, except that they had watched the culling and catching of oysters but that no oysters had been planted by them. (R. p. 8). That by far the largest amount of the oyster industry in Louisiana was centered west of the Mississippi River, that being the neighborhood in which the raw oyster industry in Louisiana was carried on by persons who grow oysters for the market and by persons who would catch and either ship or can oysters that came from the bayous and inlets lying about fifty or one hundred miles west of the Mississippi River, and centered around Houma and Morgan City, Louisiana. (R. p. 8).

The bill further shows that the Sea Food Company was engaged in the business of canning and packing oysters but did not have a canning and shucking plant in the State of Louisiana, and that on the 12th day of Jaunary, 1928, the Sea Food Company agreed to deliver to L. O Johnson, Jr., during the year 1928 one thousand barrels of oysters in the shell per day. That it was necessary in order that the Sea Food Company could carry out this contract that the Sea Food Company either catch or purchase oysters in the State of Louisiana and transport same from the State of Louisiana to L. O. Johnson, Jr., in the State of Mississippi, it being necessary for L. O. Johnson, Jr., to have these oysters in order that he might supply the demands of his business in Interstate and foreign commerce, and in order

that he might keep his plant in operation at Biloxi, Mississippi, in which plant he had an investment of approximately seventy-five thousand dollars, and employed a large number of men, women and children, and that unless the Sea Food Company was able to secure such supply of oysters in order to fill said contract that the business of L. O. Johnson, Jr., would be destroyed, his plant rendered valueless and its employees thrown out of employment. (R. p. 9). That the Sea Food Company desires to obtain said oysters in the shell either by taking the same from the Parishes of Louisiana described in the bill of complaint, or by purchasing the same from some person, firm or corporation who has lawfully acquired possession of same with the right of sale. That the existence of its business depended upon its ability to carry out its contract, and it is ready, able and willing to comply thereof, the contract being attached to the bill of complaint as Exhibit "C." (R. p. 10).

The complainant set up that at its 1926 session the Legislature of the State of Louisiana passed and there was approved an Act of said Legislature known as Act 258 of 1926. That sections 2 and 3 and 23 and 24 of this Act are as follows:

> "Section 2. That the right to catch and take, can, pack, shuck or deal in or transport oysters from the waters of this State, and the right to lease bedding grounds for the cultivation and propagation of oysters for any of said purposes within any waters within the territorial jurisdiction of the State is hereby granted to any bona fide resident of this State, to any firm or association composed of citizens or residents of this state, or to any corporation domiciled in, or organized under the laws of this State, having their factory or shucking plant or places of business located within the State, upon the terms and conditions and subject to the restrictions and regulations herein set forth, or under the authority of which may be imposed

by the Department of Conservation of this State. No person, firm, association or corporation, not a resident or domiciled in this State, is, or shall be, permitted to catch, take, can, pack, shuck, deal in or transport any oysters taken from the waters of this State, or lease any bedding grounds for the cultivation and propagation of oysters for any of the above purposes. Any persons, firm, association or corporation, violating any of these provisions of the section shall be liable to the penalties hereinafter proivded. Any person, firm, or corporation, properly licensed to operate in the oyster industry in this State shall be permitted to employ such labor, resident or non-resident, as may be required and to employ such vessels and their crew, resident or non-resident, as may be required upon said vessels being properly licensed as herein otherwise provided. This right to employ such non-resident labor or non-resident vessels shall be confined to the operation of any licensees as carried on within the State of Louisiana.

"Section 3. That it shall be unlawful for any person, firm or association, or corporation to ship beyond the limits of this State any oysters, caught or taken from the waters of this State, while the same are in the shells, or to export from this State any raw oyster shells. Such oyster shells are hereby declared to be the property of the State as one of its natural resources, necessary for use as cultch in the propagation and development of the oyster industry in the State in order that a valuable food supply for its citizens may be conserved and developed. Any surplus of raw oyster shells beyond the foregoing requirements may be used for the road building purposes, or ground for use as chicken feed or fertilizer, or any other purposes of material benefit to the State or to its citizens. In order that all of the inhabitants of the State of Louisiana may enjoy the State's natural food products it shall be

lawful to ship in the shell oysters from any point in the State of Louisiana to any other point in the State of Louisiana for consumption, subject to such regulations and restrictions as may be imposed by the Department of Conservation. Any person, firm or corporation of this State, who shall lawfully take any oysters from any of the waters of this State, or lawfully acquire the same, shall have a qualified interest or property in the oysters so taken in the shells, which qualified interest may be sold or transferred to any other person, firm or corporation within the limits of the State of Louisiana; and after said oysters shall have been removed from the shell, within the State of Louisiana, such lawful taker or possessor, his heirs or assigns, as the case may be, shall be vested with all of the rights and property of the State in and to said oysters and shall have the right to sell such oysters or ship the same beyond the limits of the State, without restricions or reservation, and when the raw oyster shells herein described shall have been used for the purposes herein stated the right of property therein theretofore existing in the State shall pass to the lawful taker or then possessor of such oyster shells.

"In the case of any infringement of the aforesaid qualified interests in the taker or possessor of oysters in the shell, said taker or possessor may, in his own name, maintain his action against the wrongdoer, as may be proper; and in case of larcency or other public offense concerning such oysters while in the hands of a lawful taker or possessor, or upon bedding grounds held by a lawful lessee, the ownership thereof shall be averred in such lessee, taker or possessor, when by law it is necessary to aver ownership. Any person, firm, association or corporation violating any of the provisions of this section shall be liable to the penalties hereinafter provided."

That Section 23 and 24 of said Act or as follows:

"Section 23. Vessels, their tackle and apparatus, used in the illegal taking of oysters from the waters of this State shall be seized and taken into possession by the officers and inspectors of the Department of Conservation charged with the enforcement of the conservation laws, and shall be delivered to the Sheriff of the Parish wherein the violation of the law occurred, the Sheriff being authorized to permit of the release of said vessel, or of said vessel and cargo, from seizure upon the owner thereof furnishing bond with good and solvent surety or sureties, satisfactory to the Judge of the District Court having jurisdiction, in double the value of the vessel, its tackle and apparatus, and cargo, if any, seized, providing for the return of such vessel, its tackle and apparatus, in good condition to abide the judgment of the Court.

"Such vessel shall be liable to forfeiture upon proceedings to that end being instituted in the name of the Department of Conservation by petition in an ordinary suit setting forth the cause of action and praying for the forfeiture of said vessel, its tackle and apparatus, and the Judge of the District Court having jurisdiction shall be authorized to decree the forfeiture of such vessel, with its apparel and apparatus, whereupon said vessel, with its apparel and apparatus, shall be sold at public auction by the Sheriff having jurisdiction, and the proceeds of sale of said vessel, its apparel and apparatus, less the costs of the seizure and of the proceedings, and of the keeping and sale of said vessel shall be paid into the State Treasury, to the credit of the Department of Conservation.

"The cargo of the seized vessel, if perishable, shall be sold at once by the Sheriff, or the seizing officer, to the best advantage, and the proceeds of the sale disposed of in the same manner as the proceeds from the sale of seized vessels.

"Should the owner of the seized vessel be able to prove to the satisfaction of the Court before which the case is tried that the captain, and crew, of said vessel had agreed in writing to comply with the provisions of Section 18 of this Act in every particular, and that it was not the intention of said owner to permit or allow any infraction of said provisions of the law, then, and in that event, the owner of said vessel shall be held blameless, the vessel released from seizure upon the payment of all costs, and the captain, person, agent, officer, crew or members thereof of said vessel, or by whom, or under whose direction said vessel was used in the illegal taking of said oysters in violation of Section 18 of this Act shall be adjudged guilty of violating the provisions of said section, and shall be sentenced to imprisonment in the parish jail for not less than ninety (90) days, nor more than two (2) years, in the discretion of the Court.

"Section 24. That any person, firm or corporation, or common carrier, their agents, and officers violating any of the provisions of this Act, where a punishment has not been otherwise provided shall be guilty of a misdemeanor and shall upon conviction thereof pay all costs of the prosecution, and be fined not less than one hundred dollars ($100.00) nor more than five thousand dollars ($5,000.00), or be imprisoned in the parish jail for not less than ninety (90) days, nor more than two (2) years, or both fined and imprisoned at the discretion of the Court, for each offense.

"Upon a second conviction of any person, firm or corporation, or common carrier, their agents and officers, for violating any provisions of this Act, where a punishment has not been otherwise provided, all licenses issued to such person, firm or corporation, hereunder, shall be forfeited, and it shall

be the duty of the Judge of the District Court before whom such trial shall be had to declare and order such forfeiture as a part of his sentence."

The bill of complaint further stated that under the provisions of said Act that unless restrained from so doing the complainant would not only be prevented from catching any oysters and exporting same in the shell from the State of Louisiana, but if it should acquire the oysters on the shell from any person, firm or corporation having the right to take same from the waters of the State and should attempt to transport them to the State of Mississippi for the purpose of complying with the contract set out in the bill of complaint that it will be prosecuted and its vessels and property seized for confiscation and its servants and employees and agents will be prosecuted by the defendant herein, that the penalties were very severe and that the employees for each separate offense would be annoyed, troubled, harassed and would be prevented from carrying out said contract. (R. P. 14). That each of the sections of the Act complained of violate the 14th Amendment to the Constitution of the United States, for the reason that while the Sea Food Company is forbidden from taking oysters from the territory referred to in the bill of complaint unless it shall have and maintain a packing plant in the State of Louisiana, that any individual who may be a resident of the State of Louisiana for however short a time is granted this right, and any corporation organized under the laws of the State of Louisiana maintaining such a plant as is referred to in the said Act set out in the bill of complaint may exercise such right, thereby denying to complainants the rights and immunities of citizens and further depriving it of its property without due process of law. (R. p. 15).

That the complainant Sea Food Company could only operate a canning plant in the State of Louisiana at a great loss and that enforcement of this law would compel

it to pack and can oysters in the State of Louisiana at a great and serious loss to itself as a condition precedent to its making and complying with the contract made and entered into in Interstate Commerce, wherefore, all of the sections of said Act herein referred to are repugnant to the constitution of the United States, in that such sections directly burden Interstate Commerce. (R. p. 15).

Complainant further shows that the Act specially permits and authorizes oysters in the shell to become the subject of barter, sale and trade and to become an article of Interstate Commerce and permits the complainant and each of them to acquire the same in the State of Louisiana, but because the Act forbids the shipment of the same by complainants or either of them from the State of Louisiana to the State of Mississippi that the said Act violates the 14th Amendment to the Constitution of the United States, in that they are forbidden from shipping the same out in the shells.

Complainant further shows to the court in the bill of complaint that the Act was not passed to conserve the natural resources of the State of Louisiana, because the Act expressly permits the natural resources of the State, to-wit, the oyster and the hulls to become the subject of barter and commerce and to pass from the State of Louisiana in unlimited quantities, but the only effect and purpose of this Act is to acquire the packing and manufacturing of these oysters in Louisiana, which requirement has no relation to a proper exercise of the police power of the State of Louisiana or has any relation to the conservation of the natural resources of the State, and was not passed for the purpose of conserving to the people of the State of Louisiana the oyster shells or any portion thereof, but said Act was passed with the object and purpose and view of the oysters as well as the shells being treated as a subject of Interstate Commerce, but Interstate Commerce is directly burdened therein, in that the effect of said Act complained of in the bill of

complaint is to compel and require that oysters be canned and packed in Louisiana before passing into Interstate Commerce, thus directly burdening such commerce.

That section 2 and 3 of the Act are unreasonable, unlawful and arbitrary and were passed only for the purpose of requiring canning and packing of oysters in the State of Louisiana. (R. p. 16-17).

The bill of complaint further shows that only a negligible quantity of shells of the oysters have been and are now used in the manufacture of fertilizer, or chicken feed in the State of Louisiana, but such parts that are manufactured is shipped out of the State as Interstate Commerce. That therefore the purpose of said Act is a pure subterfuge without any intention of conserving for the benefit of the people of the State of Louisiana any food supply or natural resources of the State, but is a pretense for the purpose of burdening Interstate Commerce by compelling oysters to be canned in the State of Louisiana.

The bill further shows that the section complained of in said Act violates the 14th amendment to the constitution of the United States, as well as Section 2, article 1 of the bill of rights of the State of Louisiana, for the reason that in the enforcement of this law, firms, persons and corporations in the State of Louisiana are daily shipping out in Interstate Commerce large quantities of oysters in the shell, which are shipped in barrels and sacks and with full knowledge of the officers of the law charged with the enforcement of the Act. That the statute complained by this construction placed thereon by the officers charged with the enforcement is that the system is applicable only to oysters going out of the State for the purpose of being canned or packed outside of the State. That persons, firms and corporations in the State of Mississippi are daily taking out large quantities of oysters for commercial purposes. (R. p. 18).

The bill of complaint further alleged that the charter granted the Sea Food Company, and which is annexed to the bill of complaint, constitutes a contract between the Sea Food Company and the State of Louisiana, and therefore the sections of the Act and each of them referred to have the purpose of depriving the Sea Food Company of rights granted to it by its charter, for the reason that said sections and each of them violate Section 10, Article 1, of the Constitution of the United States, prohibiting a State from passing any law impairing the obligation of contracts. (R. p. 18-19).

That the defendant, the Sheriff of St. Bernard Parish and the other defendants named in the bill of complaint are charged under the laws of the State of Louisiana with the duty of the enforcement of said Act, and that although the complainants have offered to pay all licenses and charges required by the Conservation Department of the State of Louisiana for license to take oysters from the reefs of said State in the Parishes named in the bill of complaint, and offer in the bill of complaint to pay all severance taxes, license taxes and other taxes imposed by such Act or any section thereof, that the officers referred to in the bill of complaint will promptly under the provisions of said Act interfere with the Sea Food Company in its carrying out of the contract, by transporting oysters from the State of Louisiana in the shell caught or bought by it in said State by arresting its servants, agents and officers and by confiscating and forfeiting its vessels, equipment and property, and that therefore they are prevented in carrying out a contract in Interstate Commerce and immediate and irreparable loss and damage has resulted and will continue to result to each by reason of the unlawful acts and conduct of the defendants, who are proceeding to act and who will act and continue to act in and by virtue of the terms of the Act set out in the bill of complaint. (R. p. 20). That while the whole Act complained of and all of the taxes and licenses thereunder levied are un-

constitutional and violate the Commerce Clause of the constitution of the United States and other property sections and clauses set out in the bill of complaint, they offer to pay such taxes and charges as a condition precedent to the right of complainant to take and ship oysters from that portion of the State of Louisiana referred to in the said bill, and in all other things offer to equity in the premises. (R. p. 20).

Annexed to this bill of complaint and an exhibit thereto is a Charter of the Sea Food Company, (R. p. 22). The contract entered into between L. O. Johnson, Jr., and the Sea Food Company is also annexed and made an exhibit to the bill. (R. p. 25).

The bill of complaint was duly sworn to by A. R. Heidenheim and L. O. Johnson, Jr., representing the parties complainant. The prayer of the bill of complaint being that a temporary restraining order issue from the District Court restraining the defendants from enforcement of the Act complained of. That a hearing be had before three Judges as provided by Act of Congres and a temporary injunction issue thereon, and that upon final hearing hereof the temporary injunction be made permanent, and for general relief.

This bill being presented to the Honorable Louis H. Burns, Judge of the said Eastern District of Louisiana, an order to show cause was issued and assigning this cause to be heard on the 26th day of January, 1928, at New Orleans, Louisiana, before Honorable Rufus E. Foster, United States Circuit Judge, Honorable E. R. Holmes and Honorable Louis H. Burns, District Court Judge, composing a Court of three Judges as required by the statutes of the United States. (R. p. 28). And at the same time Judge Burns granted a temporary restraining order restraining and enjoining the defendants and each of them from attempting to enforce the pro-

visions of said Act pending the hearing by the statutory court created on the motion for a temoprary injunction in accordance with the prayer of the bill of complaint. (R. p. 34-35).

Before the hearing of the motion for a temporary injunction was had, two citizens of the State of Louisiana, Tanos Herbert and Charles Bordeau filed a petition of intervention. (R. p. 29). In this petition of intervention they set out they were citizens of the State of Louisiana, employed at Biloxi, Mississippi, and represented a class of over one thousand of such citizens who were working at Biloxi. That they adopted all of the allegations of the bill complained. Further show that they and their fore-parents for over a hundred years had lived, resided and worked in the State of Louisiana, but that due to the failure of the cane crop for several years they were deprived of their means of earning a livelihood, and knowing no work other than cane work and work about oyster factories had endeavored to secure such work in the State of Louisiana, but failing to do so had been compelled to remove to Biloxi, Mississippi, where they were living and working pending an improvement in cane business which would permit of their return to the State of Louisiana. (R. p. 30). That petitioners were working for the Sea Food Company in Biloxi, and that unless the contract entered into between the Sea Food Company and L. O. Johnson could be carried out by said parties they would be deprived of their means of earning a livelihood and deprived of their right to catch oysters in the State of Louisiana, which right was granted them as citizens and which right was an unalienable right vested in every citizen of the State of Louisiana to take these oysters and fish from the waters of the State of Louisiana. (R. p. 32). That while this right was denied to the petitioners that other more favored citizens of Louisiana were being allowed to ship raw oysters in the shell from the State to points outside of the State for the purpose of being used in restaurants,

dining cars and lunch stands and the law as it is being administered discriminates against petitioners and denies to petitioners the equal protection afforded by the laws of the State of Louisiana to other citizens, and praying they be allowed to join in the bill of complaint on behalf of themselves as well as the class they represented and for the right to adopt the original bill of complaint as their bill of complaint, and that the preliminary restraining order be extended to them and all of their class working on boats in Biloxi operated by complainants and to all the class they represent, and generally praying for all the relief that could be afforded in a court of equity against the enforcement of the law complained of and for general relief. (R. p. 33).

An order was entered by the three Judges constituting the Statutory Court allowing these persons to become parties complainants and giving to them all rights of a party complainant including the benefits of the restraining order issued upon the original bill of complaint. (R. p. 34).

Thereupon the complainants moved for an interlocutory injunction. (R. p. 36). Thereafter there was filed an Answer and Exception of the defendants. (R. p. 36). Which Exception denied the right of complainants for any relief, for the reason that the waters of the State of Louisiana belong to the State, and for other reasons set out in the Exceptions found at page 37 of the Record, and one of which reasons was that the State of Louisiana in its sovereign capacity retains title in the oysters caught upon its bottoms until each and every condition attached to the divesting of the title of the State in said oysters has been removed in compliance with the provisions of its laws.

At the hearing before the Statutory Court created under the provisions of the Statute of the United States much proof was offered by the complainants in support

of the averments of the bill of complaint, which proof consisted of the affidavits of numerous persons found in the Record.

This proof was in substance as follows: That the oyster reefs of the State of Louisiana are of such immense size that the working same for commercial purposes did not effect their value or area and the only danger to these oysters is allowing them to remain unworked, thereby so increasing the growth of oysters that the oysters die of their own volition. (R. p. 76). And in the State of Louisiana there are millions of barrels of these oysters which have died and now forming dead oyster reefs, the shells of which are used for building roads and for ballast on railroads. That these shells can be removed by any person resident or non-resident of the State of Louisiana in unlimited quantities, and at this time they are being bought and removed out of the State of Louisiana for road building purposes, yielding to the State of Louisiana the small price of two cents per cubic yard, which is less than one-tenth of the amount which would be yielded from the tax on the live oyster alone. (R. p. 77). That during the past sixty years there has been built up in Biloxi a great industry in the packing and shipment of oysters and during this time these oysters have been obtained from Louisiana to such an extent that various citizens of Louisiana have come to Biloxi and built their factories in Biloxi. (R. p. 77) That at the same time hundreds of natives of Louisiana temporarily reside at Biloxi working around these factories. That very few of the oysters caught in the eastern part of Louisiana are canned within that area, there not being over one thousand barrels of oysters canned per day, whereas the yield of oysters east of the Mississippi River is between five and ten thousand barrels per day without the possibility of any danger to the oysters. (R. p. 76). That the reason why the oysters cannot be successfully canned in Louisiana east of the river is, that it is almost impossible to obtain proper sites to pack oysters

in Louisiana on account of the distance from the banks of the main stream of the Mississippi River to the place where the oysters are caught and no proper supply of pure water can be had. (R. p. 78). That oysters in Louisiana have been regarded as a commodity saleable on the open market, and the sole purpose of catching these oysters from time the fisherman goes into the marsh after the oysters was either to sell them or to ship them out of the State or sell them to factories located in the State for the purpose of being canned and thereafter to be shipped out of the State, very few oysters being required by local citizens of the State, and over nine-tenths of the oysters used by citizens of the State having been grown on private beds and all of the marsh oysters having been sold and exported from the State. (R. p. 78). That the law complained of is enforced only in reference to oysters packed or canned and not to conserve the oyster supply in Louisiana. That this purpose was so stated when the passage of the law was being sought at Baton Rouge, and that the law is being so enforced that oysters in increasing quantities are being shipped out of the State in the shell as raw oysters to be used by restaurants and raw dealers throughout the United States. R. p. 79). That the suply of oyster shells in Louisiana is so great that very few persons engaged in the oyster business pay any attention to the shells, these shells being in many instances dumped into the bayous of the State. (R. p. 79).

There was further introduced the following affidavits to show that oysters in the shell can not only be bought in unlimited quantities in the State of Louisiana, but no attention is paid by officers of Louisiana with reference to the enforcement of the Act against those persons shipping oysters from the State other than for canning purposes. In support of this contention complaint introduced the affidavit of Ernest Desporte, Jr., (R. p. 28), affidavit of Louis Braun (R. p. 44), affidavit of L. O. Johnson, Jr., (R. p. 49), affidavit of Theodore

Grillis (R. p. 52), affidavit of Dominick Caravella (R. p. 54), affidavit of B. C. Young (R. p. 55), affidavit of Pete Messina (R. p. 56), affidavit of Charlie Chagare (R. p. 58), affidavit of K. Joseph (R. p. 58), affidavit of E. J. Misticos (R. p. 59), affidavit of D. J. Goodin (R. p. 61). This last mentioned affidavit shows that this man had spent over two weeks in New Orleans and had gone to all of the numerous plants in New Orleans where raw oysters were sold in the shell, had seen these oysters shipped from New Orleans to all parts of the United States in their raw state, being shipped out of New Orleans on dining cars for the purpose of being eaten by the patrons of said cars, had purchased said oysters and had himself shipped them out of the State, and made inquiries of persons engaged in this business and was assured by them that not only would they take his orders for shipment out of the State but that orders in unlimited quantities for shipment out of the State would be filled by them. That during his entire time and experience in New Orleans, during which time he had called upon all of the persons engaged in this business and had made purchases from them, that he found absolutely no restriction placed by the enforcement officers of the State of Louisiana upon the carrying on of this traffic of oysters in the shell, and that he was informed by persons affected thereby that there was no enforcement through the Conservation Department in the conduct of its business. This affidavit was corroborated by the affidavit of J. R. McKinnon, found on page 72 of the Record, who saw oysters shipped in the shell from Louisiana and was quoted prices on oysters by all persons engaged in the raw oyster business in New Orleans, and that he saw no evidence whatever of the inspection of this business by the State officers of Louisiana. That although he carefully questioned the various persons engaged in this business he was unable to ascertain if any effort was made by the officers of Louisiana to prevent the shipment of raw oysters in the shell from Louisiana. That this business was a large business and was constantly

increasing and was in direct competition with the business of the complainants in the bill of complaint. (R. p. 73-74). This is corroborated by the affidavit of Henry Weidmann (R. p. 74). There being attached to these affidavits various exhibits showing the barrels in which the oysters were shipped, the bills of lading for the oysters, the bills or invoices for the oysters, and places in which they were being sold all over the States of Louisiana, Arkansas and Tennessee.

The record further discloses (at page 42) that the damages that would be suffered by the complainants would be in excess of three thousand dollars, and that an attempt has been made by the Sea Food Company to comply with all of the taxing features of the statutes complained of; that the Sea Food Company is domiciled in New Orleans and that the charter attached to the bill of complaint is the charter under which the said Company is operating, and that the contract entered into between the parties and attached to the bill of complaint as an exhibit is a valid legal obligation upon the parties. (R. p. 41-42). That sufficient oysters can be bought in the State of Louisiana in the public markets to carry out the terms of this contract, but that the contract cannot be carried out in Louisiana nor can oysters be successfully canned in Louisiana for the reason that factory sites in Louisiana can only be reached through bayous and canals owned by private individuals and that sufficient expert labor cannot be secured in quantities that would enable a factory to successfully operate, (R. p. 43) and that oysters could only be canned by the complainants in the State of Louisiana at a very great loss involving thousands of dollars. (R. p. 43). That in the whole district complained of in the State of Louisiana there are only two canneries, both of which are located at the head of private canals, and that there is no present need of oyster shells for chicken grit or fertilizer, as the State of Louisiana has numerous reefs of dead oyster shells where millions of barrels of shells can be cheaply obtained (R. p. 44).

In addition to all of the affidavits hereinbefore referred to there was filed the affidavit of Louis Braun (R. p. 44), the affidavit of R. H. Chinn (R. p. 45), affidavit of L. O. Johnson, Jr., (R. p. 49), affidavit of B. O. Gunn, (R. p. 70), affidavit of C. B. Foster (R. p. 76), affidavit of B. Taltavull (R. p. 80), all of which affidavits offered proof of each and every fact set out and alleged in the bill of complaint, and showed conclusively that not only did Louisiana possess a vast source of supply of raw oysters, but that absolutely no limit was being placed by the State of Louisiana on the catch of these oysters, nor was there any limit placed by the State of Louisiana on the shipment of these oysters in the raw shell other than for the purpose of canning purposes, and that after the oysters were canned in Louisiana there was no limit placed upon the shipment of the canned article from the State or upon the shipment of fertilizer and chicken feed, this being the by-product of the oyster shell, from the State. That all of these by-products were shipped from the State, and that although the strictest watch was kept by the State of Louisiana upon those persons desiring to take oysters from said State to the State of Mississippi for canning purposes, that absolutely no attention was given by the enforcement officers of said State to the operation of business of those persons engaged in shipping raw oysters in the shell for use in the raw state in restaurants, dining cars, etc., of other States of the Union. That the sole purpose of the Act was not to conserve any of the natural resources of the State as a food supply for the people of the State or as a fertilizer or chicken feed supply for the people of the State of Louisiana, but its only purpose and the underlying motive for the Act was to compel those persons engaged in the packing of oysters in Biloxi and other parts of Mississippi to remove their factories to the State of Louisiana so that the State of Louisiana might benefit from the operation of factories in that State. That although he factories could be moved to the State of Louisiana and some of the fac-

tories would be able to find locations in the State of Louisiana, this could only be done at a great and unnecessary expense in the operation of its business and it would cost the factories involved great sums of money in excess of the money now being spent in the operation of their business to successfully operate in the State of Louisiana. That this added cost would be felt in the price of oysters, all of which are used in Interstate Commerce. See the affidavit of R. H. Chinn, (R. p. 45), affidavit of Louis Braun (R. p. 43), affidavit of A. R. Heidenheim (R. p. 41).

In opposition to the testimony herein above described which was presented to the court by the complainant, the defendants introduced three affidavits, first, that of George Birrell (R. p. 85), which affirmed that in certain parts of the State of Louisiana the oyster supply was very small on account of certain crevasses that had occurred in this part of the State, and that if the Mississippi fishermen were allowed to fish in this part of the State the entire supply of oysters would be depleted in about thirty days. The affidavit of Dr. V. K. Irion (p. 86 of Record) shows that the oyster shells gathered from the waters of the State are being used in shell crushing factories making chicken feed and for road building and ballast purposes, and that this affiant who is at the head of the Conservation Department, knows nothing about the shipment of raw oysters in the shell from the State. The third affidavit is that of James N. McConnell (p. 87 of Record), who states that the oyster factories of Mississippi can acquire suitable sites in Louisiana, and that the oyster shells are being used to make chicken feed and for road building purposes, and that as far as affiant knows that no oysters are being shipped out of the State of Louisiana in the shell in violation of the oyster law, the affiant being one of those persons charged with the enforcement of this law. There were no facts presented that any of the shells were used as cultch, this being the purpose set out in the Act

for which the shells would be valuable, and no inspectors were maintained at the place of business of those engaged in the raw oyster business, nor was there any danger of the oyster reefs of Louisiana being depleted, except the affidavit of Birrell, hereinabove referred to, nor was there any restriction placed upon the amount of oysters that could be caught and canned in the State of Louisiana and thereafter shipped out of the State of Louisiana in cans, nor was there any restriction placed on the amount of oyster shells that could be ground into chicken feed and ballast and shipped in that condition from the State of Louisiana. There was no denial that oysters were commonly regarded as an article of commerce, and that the sole purpose of the catching and canning of these oysters was to inject same into Interstate Commerce, nor was there any denial that the law was being and would be rigidly enforced against the complainants, nor was there any denial of any other material fact set out in the bill of complaint.

After the hearing a decree was rendered by the Statutory Court recalling the temporary restraining order (R. p. 90), and thereafter a petition for appeal was filed (R. p. 91), and an order signed by the Court allowing the appeal and decreeing that pending the appeal from the decree in said cause to the Supreme Court of the United States that the portion of the decree appealed from withdrawing the temporary restraining order heretofore issued was revoked, suspended and set aside.

Bond required in the sum of ten thousand dollars was given and the same was approved, and this case is being presented here on direct appeal from the adverse decision of the Statutory Court below, which decree was rendered without any written opinion by the Court or any finding of fact on the allegations of the bill of complaint.

ARGUMENT

Point I

SECTIONS 13 AND 19, ACT NO. 103, PASSED BY THE LOUISIANA LEGISLATURE, APPROVED JULY 8, 1926, KNOWN AS THE "SHRIMP ACT", AND SECTIONS 3, 23 AND 24, ACT NO. 258, PASSED BY THE LOUISIANA LEGISLATURE, APPROVED JULY 14, 1926, KNOWN AS THE "OYSTER ACT", CONTRAVENE AND ARE IN VIOLATION OF PARAGRAPH 3, SUB-DIVISION VIII, ARTICLE I, OF THE CONSTITUTION OF THE UNITED STATES CONFERRING UPON THE CONGRESS OF THE UNITED STATES EXCLUSIVE POWER TO REGULATE COMMERCE.

In Cause No. 768 is presented the constitutionality of what is known as the "Shrimp Act", being Act No. 103, Louisiana Legislature, 1926. The entire statute is printed in the transcript of record No. 768 (Tr. 20).

Cause No. 769 presents for consideration the constitutionality of what is known as the "Oyster Act", being Act No. 258, Louisiana Legislature, 1926. Pertinent sections of this Act will be found as an appendix to this brief.

Sections 4 and 5 of the "Shrimp Act" are in the following language:

> "Section 4. That the right to take salt water shrimp from the waters of this State and the right to can, pack or dry the said shrimp when caught are hereby granted to any resident of this State, to any firm or association composed of residents of this State, or to any corporation domiciled in or organized under the laws of this State, operating a canning or packing factory or drying platform in this State. These rights shall be confined to

such persons and corporations and are granted subject to the further conditions hereinafter stipulated. It shall be unlawful for any person not a resident of this State, or for any firm or association not composed of residents of this State, or for any corporation not domiciled in or incorporated under the laws of this State, to catch salt water shrimp in the waters of this State, or to can, pack or dry in any factory or on any platform in this State, any salt water shrimp caught from the waters of this State; and any person, firm or corporation so violating the provisions of this Section shall be liable to the penalties hereinafter provided.

"Section 5. That it shall be unlawful for any person, firm or corporation to seine, trawl for, catch or attempt to catch or have in possession, any salt water shrimp from beyond the waters of the State for use or sale in this State, or from the outside waters of the State, as heretofore described, or from the inside waters of the State, as heretofore described, between the fifteenth day of June and the fifteenth day of August, both dates inclusive, of any one year. It shall be unlawful for any person, firm, or corporation, otherwise authorized to operate under this act, to seine, trawl for, catch or attempt to catch, any salt water shrimp from the inside waters of this State between the first day of December and the fifteenth day of March, both dates included, and between the fifteenth day of June and the fifteenth day of August, both dates included, of any year. Any person, firm or corporation, otherwise authorized under this Act may seine, trawl for, catch or attempt to catch any salt water shrimp from the outside waters of this State, as hereinbefore described, at any time, except between June fifteenth and August fifteenth of each year, both dates included, and except between

February first and March fifteenth, of each year, both dates included. The remaining portions of the year shall be known as the open season and salt water shrimp may then be taken by any person, firm or corporation, herein otherwise authorized to do so, from any of the waters of the State and may be had in possession for sale, drying or canning, subject to the conditions stipulated in this Act. Salt water shrimp, legally taken and dried or canned within this State and upon which the license and severance taxes have been paid as required by this Act, may be bought and sold at any time. Salt water shrimp in their fresh state, legally caught during the open season, may be had in possession for drying or canning, or sale in their fresh state, for five (5) days after the end of the open season. It is not intended by the provisions of this Act to interfere with the fishermen securing shrimp for bait; or for home consumption or the local markets, in their fresh state, provided they are taken from the outside waters of the State, and provided further that shrimp for bait may be secured from either the inside or or outside waters of the State at any time."

Section 19, which provides punishment therefor, is in the following language:

"Section 19. That any person, firm or corporation or common carrier, their agents and officers violating any provisions of this Act, where a punishment has not been otherwise provided, shall be guilty of a misdemeanor and shall on conviction thereof be fined not less than Twenty-five Dollars ($25.00) or not more than One hundred Dollars ($100.00) for the first offense, nor less than One Hundred Dollars ($100.00) nor more than Two Hundred Dollars ($200.00) for the second offense and for the third offense the fine shall not be less than One Hundred Dol-

lars ($100.00) nor more than Two Hundred Dollars ($200.00) and in addition the license under which operations are being conducted shall be revoked. For each offense the courts may impose a sentence in the parish jail for not less than five days nor more than thirty days or may impose both fine and imprisonment at the discretion of the court for each offense; and in addition thereto the boats, seines or other devices used in such violations may be confiscated by order of the Court.

"Vessels, their tackle and apparatus, used in illegal taking of salt water shrimp from the waters of the State, or used in the illegal transportation of salt water shrimp taken from the waters of this State, shall be seized and taken into possession by the officers or inspectors of the Department of Conservation charged with the enforcement of the Conservation laws, shall be delivered to the Sheriff of the Parish wherein the violation of the law occurred, the Sheriff being authorized to permit of the release of the said vessel from seizure upon the owner thereof furnishing a bond satisfactory to the Judge of the District Court having jurisdiction, providing for the return of such vessel and its apparel and apparatus to abide the judgment of the Court. Such vessel shall be liable to forfeiture upon proceedings being instituted to that end by the District Attorney having jurisdiction, and the Judge of the District Court having jurisdiction shall be authorized to decree the forfeiture of such vessel shall be sold at public auction by the Sheriff having jurisdiction and the proceeds of sale of said vessel, its apparel and apparatus, less the cost of the seizure, keeping and sale, shall be paid into the State Treasury to the credit of the Department of Conservation. Any person, firm or corporation found guilty by the Court of violating the provisions of this law

prohibiting the exportation of salt water shrimp from the State, unless and until the hull or shell and head shall have been previously removed therefrom within this State shall be liable to a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00), or to imprisonment of not less than six months (6) nor more than one (1) year and shall be liable to both fine and imprisonment in the discretion of the Court."

In Cause No. 768, the complainant, the Foster-Fountain Packing Company, was a corporation chartered under the laws of the State of Louisiana. The charter will appear Tr. 109.

The objects and purposes of the corporation, as provided in the charter, are stated as follows:

"Article III

Object and Purposes.

"The objects and purposes for which this Corporation is organized and the general nature of the business to be carried on by it, are stated and declared to be as follows:

"1st. To do a general canning business of Oysters, shrimps and other sea foods and all vegetables and fruits;

"2nd. To own and operate boats and various kinds of equipments in the conduct of said business.

"3rd. To buy and sell and pack canned goods for food; to buy, construct and operate factories for the manufacture of canned goods for food; to do all other acts necessary or incidental to the

conduct of the canning goods business, such as the manufacture of cans, raising or growing crops for canning, and to buy, rent or lease estate for any or all of these purposes."

The Sea Food Company, complainant, was a Mississippi corporation, organized under the laws of the State of Mississippi, operating at Biloxi, Mississippi, a plant for packing shrimp and canning oysters.

Shrimp are a migratory fish, found in large and unlimited quantities within three miles of the Louisiana shore, in the waters, bays, inlets and bayous of the Gulf of Mexico adjoining the parishes of St. Bernard and Plaquemine, situated east of the Mississippi River. These shrimp do not breed in Louisiana waters but enter the waters from the Gulf on account of certain attractions for them which exist there. They are constantly moving, in one place today, and gone tomorrow. These shrimp are a well known article of food. In plants for such purpose the heads and hulls are taken off and they are packed and as a regular commodity enter into interstate and foreign commerce as an article of food.

These shrimp are not found in the Mississippi waters in large quantities. Owing to the advantageous situation of the land in and adjoining Biloxi, Harrison County, Mississippi, some fifty years ago citizens of Louisiana came to Mississippi and began the business of packing for sale and shipment in interstate commerce, shrimp. These shrimp have been obtained in Louisiana waters, described in the pleadings in this case, brought to Biloxi in boats, where the heads and hulls were taken therefrom, and there packed and sold both in interstate and foreign commerce. In the past few years the business has been greatly developed. At the time this suit was filed there were approximately sixteen factories at Biloxi, Mississippi, engaged in packing shrimp and selling the commodity as a food

in interstate and foreign commerce, the total investment in which aggregated over $1,000,000.00, in which several thousand persons were employed, and the annual sales therefrom exceeded $1,000,000.00.

Upon August 14, 1927, the Foster-Fountain Packing Company, one of the plaintiffs in error, entered into a contract (Tr. 19) by which it obligated itself to acquire in the State of Louisiana certain shrimp, and to transport, sell and deliver to the Sea Food Company, one of the plaintiffs in error, at Biloxi, Mississippi, 1,000 cases thereof per month during the season of 1927-1928.

The open season for shrimp in 1927 opened June 15th. The authorities in the state of Louisiana, being the defendants in error in this case, charged with the enforcement of the "Shrimp Act", immediately placed boats and officers in charge thereof in the waters in question for the purpose of enforcing the act and preventing shrimp being transported with the heads or hulls thereupon from Louisiana to Mississippi.

The evidence established that the territory in Louisiana contiguous to these waters was not favorable to packing shrimp; that there were one or two small factories situated in this territory east of the Mississippi River, but that conditions were unfavorable; the country was low and marshy, habited by mosquitoes. That the shrimp existed in these waters in unlimited and ever increasing quantities; that unless they were caught today they would be gone tomorrow. That the hulls and heads of the shrimp were of very slight value; that as the usual custom where shrimp are packed in the State of Louisiana at local plants the heads and hulls were thrown away; that they are very offensive by reason of their odor, and give a great deal of trouble; that they were usually thrown back into the Gulf; that a negligible portion thereof, however, were dried at plants for that purpose and made

into what is known as shrimp bran, a commodity which could be used in the manufacture of fertilizer, but when so treated this commodity was invariably shipped out of the State of Louisiana; that probably not over five per cent of the shrimp caught in Louisiana waters were actually consumed in the state; that 95 per cent were packed and shipped in interstate commerce; that only a negligible quantity of the heads and hulls of the shrimp packed in Louisiana were preserved at all; those were made into shrimp bran, as aforesaid, and shipped into fertilizer factories in other states. These facts abundantly appear, not only from the statement of facts hereinbefore contained, but from the following affidavits contained in the record:

Louis Brown (Tr. 58); A. S. Gorenflo, and eleven other fishermen (Tr. 60); L. O. Johnson (Tr. 71); Ernest Desporte, Jr., (Tr. 77); O. G. Swetman (Tr. 83); C. B. Foster (Tr. 85); Victor Ellis (Tr. 86); R. Hart Chinn (Tr. 87); Oscar Oliver (Tr. 94); Lewis Carlotte (Tr. 95); A. R. Heidenheim (Tr. 96); L. G. Moore (Tr. 97); E. C. Tonnemire (Tr. 98); Tony Williams (Tr. 100).

It appeared from the affidavits of the defendants in error that the hulls and heads of the shrimp had some fertilizer value (Donald W. Howe, Tr. 103), and that there were plants in the State of Louisiana where they were utilized for the purpose of making shrimp bran (Stanley C. Arthur, Tr. 117; Charles F. Greiner, Tr. 124; James V. Dunbar, Tr. 128; and Dr. L. H. Jastremski, Tr. 131); but the evidence was undisputed that all of the heads and hulls of shrimp made into shrimp bran at Louisiana plants were shipped in interstate commerce, practically all of it going to Biloxi, Mississippi, (R. L. Cohen, Tr. 127), where the same was used in making fertilizer.

The evidence established that but for the restraining order obtained in the case that the plaintiff in error would have been prevented from consummating the contract hereinbefore referred to; and the three judge court that heard the case found as a matter of fact that unless the status quo was preserved on appeal that irreparable harm, injury and damage would be sustained by plaintiffs in error (Tr. 138).

Cause No. 789 involves the constitutionality of the "Oyster Act", being Act No. 258, Louisiana Legislature of 1926.

Sections 2 and 3 of the Act are in the following language:

"Section 2. That the right to catch and take, can, pack, shuck or deal in or transport oysters from the waters of this State, and the right to lease bedding grounds for the cultivation and propagation of oysters for any of said purposes within any waters within the territorial jurisdiction of the State is hereby granted to any bona fide resident of this State, to any firm or association composed of citizens or residents of this State, or to any corporation domiciled in, or organized under the laws of this State, having their factory or shucking plant or places of business located within the State, upon the terms and conditions and subject to the restrictions and regulations herein set forth, or under the authority of which may be imposed by the Department of Conservation of this State. No person, firm, association or corporation, not a resident of or domiciled in this State is, or shall be, permitted to catch, take, can, pack, shuck, deal in or transport any oysters taken from the waters of this State, or lease any bedding grounds for the cultivation and propagation of oysters for any of the above purposes. Any person, firm, association or corporation, violating any of the provisions of

this section shall be liable to the penalties hereinafter provided. Any person, firm, or corporation, properly licensed to operate in the oyster industry in this State shall be permitted to employ such labor, resident or non-resident, as may be required and to employ such vessels and their crew, resident or non-resident, as may be required upon said vessels being properly licensed as hereinotherwise provided. This right to employ such non-resident labor or non-resident vessels shall be confined to the operation of any licensees as carried on within the State of Louisiana.

"Section 3. That it shall be unlawful for any person, firm or association, or corporation to ship beyond the limits of this State any oysters, caught or taken from the waters of this State, while the same are in the shells, or to export from this State any raw oyster shells. Such oyster shells are hereby declared to be the property of the State as one of its natural resources, necessary for use as cultch in the propagation and development of the oyster industry in the State in order that a valuable food supply for its citizens may be conserved and developed. Any surplus of raw oyster shells beyond the foregoing requirements may be used for road building purposes, or ground for use as chicken feed or fertilizer, or any other purpose of material benefit to the State or to its citizens. In order that all of the inhabitants of the State of Louisiana may enjoy the State's natural food product it shall be lawful to ship in the shell oysters from any point in the State of Louisiana to any other point in the State of Louisiana for consumption, subject to such regulations and restrictions as may be imposed by the Department of Conservation. Any person, firm or corporation of this State, who shall lawfully take any oysters from any of the waters of this State, or lawfully acquire the same, shall have a qualified in-

terest or property in the oysters so taken in the shells, which qualified interest may be sold or transferred to any other person, firm or corporation within the limits of the State of Louisiana; and after said oysters shall have been removed from the shell, within the State of Louisiana, such lawful taker or possessor, his heirs or assigns, as the case may be, shall be vested with all of the rights and property of the State in and to said oysters and shall have the right to sell such oysters or ship the same beyond the limits of the State, without restriction or reservation, and when the raw oyster shells herein described shall have been used for the purposes herein stated the right of property therein theretofore existing in the State shall pass to the lawful taker or then possessor of such oyster shells.

"In case of any infringement of the aforesaid qualified interests in the taker or possessor of oysters in the shell, said taker or possessor may, in his own name, maintain his action against the wrongdoer, as may be proper; and in case of larceny or other public offense concerning such oysters while in the hands of a lawful taker or possessor, or upon bedding grounds held by a lawful lessee, the ownership thereof shall be averred in such lessee, taker or possessor, when by law it is necessary to aver ownership. Any person, firm, association or corporation violating any of the provisions of this section shall be liable to the penalties hereinafter provided."

Sections 23 and 24 provide punishment therefor, and the method of enforcing the Act. The "Shrimp" and the "Oyster Act" are similar; in fact identical in purpose. A criminal penalty is provided of a fine ranging from $100.00 to $5,000.00, imprisonment in the county jail from ninety days to two years, or both. (Section 24). Section 23 provides for a confiscation of the vessel used for such purpose.

The facts in respect to the "Oyster Act", cause No. 769, are very similar to those in the "Shrimp Act." The Sea Food Company, a Louisiana corporation, was chartered under the laws of the State of Louisiana for such purpose (Tr. 22), Article 4 of the charter being in the following language:

> "The objects and purposes for which this corporation is organized, and the nature of the business to be carried on by it are hereby declared to be: To buy, sell, can, import and export oysters, shrimp, fish, fruit and vegetables; to buy, operate and run boats and seines necessary to catch said shrimp, oysters and fish, and generally to do and engage in any business or enterprise connected with, growing out of, or incidental to the objects and purposes hereinbefore set forth or contemplated by this charter."

L. O. Johnson was an individual at Biloxi, Mississippi, operating an oyster canning plant. The Sea Food Company entered into a contract (Tr. 25) by which it bound itself to transport and convey from the waters of the State of Louisiana to Biloxi, Mississippi, 1,000 barrels of oysters per day for a stipulated price. The oyster business, like the shrimp business, began at Biloxi, Mississippi, in a small way by Louisiana citizens, because of the favorable conditions surrounding the manufacture of the commodity at such point, and the very unfavorable conditions existing in the parishes of St. Bernard and Plaquemine in the State of Louisiana, east of the Mississippi River.

In 1912 this industry had reached such proportions that the Legislature of Louisiana, in order to induce the canning of these oysters in Louisiana, passed an act prohibiting the shipment of oysters out of the state in shells for the purpose of canning beyond the limits of the state. Specific reference will be made to this statute

later. The same was stricken down as being unconstitutional and not a legitimate exercise of its police power by the Supreme Court of Louisiana.

The proof established that oysters are recognized as an article of interstate commerce. Large plants in the State of Louisiana are operated west of the Mississippi River where shrimp are packed and oysters are canned, all of which is done in order to prepare the same as a commodity for interstate commerce. That no plant, however, has ever been able to operate successfully in the territory in Louisiana east of the Mississippi River involved in this suit, because of unfavorable conditions hereinbefore referred to. For that reason Louisiana people built up the manufacturing establishments at Biloxi, Mississippi. There are some fifteen or twenty plants canning oysters at Biloxi, Mississippi; a large sum of money is invested therein, and several thousand persons are employed.

The prevention of compliance with the contract entered into by plaintiffs in error would cause their investment at Biloxi, Mississippi, to be valueless, throw many persons out of employment, and would deprive plaintiffs in error of the profit accruing to them by reason of the execution of the contract.

It is conceded that January 1st, 1928, when the Act went into effect, that the defendants in error, who are charged by the Act complained of with enforcement thereof, were patroling the waters in the State of Louisiana to prevent oysters being taken out in the shells, as provided by the Act, and that but for the restraining order the consummation of the contract would have been interfered with; that the agents and servants in charge of the boats would have been arrested and the boats seized and confiscated.

The affidavits offered by plaintiffs in error show that not five per cent of the oysters grown in the State of Louisiana were used therein; that 95 per cent thereof

were sold in interstate commerce; that east of the Mississippi River in the territory where the plaintiffs in error expect to acquire oysters for filling this contract, they exist in very vast quantities, in fact in many places the oyster reefs are being damaged by reason of the fact that the oysters have not been removed; that a very negligible use is made in the State of Louisiana of the shells or oysters; that in the reefs especially in the territory involved in this suit that there are millions and millions of old oyster shells; that as a general practice where the shells are taken from oysters at plants in Louisiana they are thrown away and used for no purpose; that, however, the shells may be used for ballasting railroads, and out of the shells there may be made a commodity susceptible of being used as chicken feed and/or fertilizer, but that where the oyster shells are so treated the commodity is invariably shipped out of the State of Louisiana; that from the reefs in the territory involved in this suit from 5,000 to 10,000 barrels of oysters per day can be taken without disadvantage; that not only are there millions of oyster shells on these reefs which are valueless on account of the vast number, but that the conservation authorities are selling these oyster shells, permitting the purchasers to convert the same into a salable commodity, none of which is used in the State of Louisiana but is shipped to other states in Interstate Commerce; that oysters are a recognized commodity in Interstate Commerce and in Louisiana are packed and sold in large quantities. See affidavits, Ernest Desporte, Jr., (Tr. 38); Anna R. Heidenheim (Tr. 41); Louis Braun (Tr. 44); R. Hart Chinn (Tr. 45); L. O. Johnson (Tr. 49); J. R. McKinnon (Tr. 72); C. B. Foster (Tr. 76); B. Taltavul (Tr. 80).

The three judge court, while denying the application of plaintiffs in error for an interlocutory injunction, found that unless the status quo was preserved that the plaintiffs in error would sustain irreparable harm, injury and damage (Tr. 92).

It must be borne in mind that in each of the cases the complainants, the plaintiffs in error, might have acquired the shrimp and oysters with which to complete their contracts, either by purchasing the same from some person, firm or corporation in Louisiana authorized and licensed to catch and take the same, or to catch and take the same themselves, unless prohibited by the Act from so doing, if the Legislature of the State could constitutionally deny a Louisiana corporation such right.

Both the Foster-Fountain Packing Company and the Sea Food Company of Louisiana were Louisiana corporations, but neither operated a drying plant within the State, it being their contention, as will be hereinafter set out, that the State could not impose as a condition to their catching shrimp and taking oysters, a right granted to all citizens of the State, a condition that they operate a drying plant within the State. The right of the Foster-Fountain Packing Company and the Sea Food Company of Louisiana to obtain shrimp and oysters with which to fill their respective contracts, would not depend, however, upon their legal right to catch the shrimp or to take the oysters within the State, because if such right could be legally denied them they could acquire the shrimp and oysters from persons or corporations legally entitled to catch the same under the Acts.

The plaintiffs in error in these cases are not contending for the right to catch shrimp or to take oysters or to remove the same from the State of Louisiana during what is known as the closed season; neither do they desire to do so without paying the severance tax imposed by the State of Louisiana therefor as a police measure. The "Shrimp Act" provides the manner in which shrimp may be caught, the kind of trawls with which they may be taken. The "Oyster Act" provides that the oysters when taken from the reefs shall be culled and the small ones left on the reefs. The appell-

ants and plaintiffs in error regard all such regulations as legitimate conservation measures and have, notwithstanding the restraining order, complied and offered to comply therewith.

The plaintiffs in error assert that, having acquired, within the State of Louisiana, shrimp or oyster or either by catching the same, if they may not be deprived of such right, or by purchasing the same, that they can not, under either Act, be deprived of the right of transporting such shrimp or oysters beyond the limits of the State, and that the sections of the Act, hereinbefore referred to, which prohibit the taking of shrimp from the State unless the heads and hulls have been taken therefrom, and that section of the "Oyster Act" which prohibits the taking of oysters from the state in shells, are in violation of the Commerce Clause of the Constitution of the United Sates.

Paragraph 3, Sub-Division VIII, Article I, of the Constitution of the United States, confers upon the Congress of the United States the exclusive power to regulate commerce with foreign nations and among the several states. The provision is in the following language:

> "3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

Paragraph 2, Article 6 of the Constitution of the United States is in the following language:

> "This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the Supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

By the sections complained of the Legislature of the State of Louisiana says that the oysters shall not be shipped in Interstate Commerce unless and until the shells have been taken therefrom; that the shrimp shall not be shipped from the State of Louisiana in Interstate Commerce until the heads and hulls have been taken therefrom. Each of the Acts contains an express provision regulating the shipment of shrimp and oysters in Interstate Commerce.

It was perfectly apparent to that able body of men who prepared and submitted to the American people for acceptance or rejection the Constitution of the United States, that an intolerable condition was created through the selfishness of the members of the confederacy in their regulation of commerce among themselves, and that there could be no permanent Union unless this important matter was left under the exclusive control of the central government.

In "A History of the American People" by Woodrow Wilson, Volume III, page 54, the following language is used:

> "In 1786 they were asked to intrust to the Congress at least the collection and use of a revenue laid upon imports; and so plain had both the necessity and the propriety of such an addition to its efficiency by that time become that all of the states except New York consented. But it required the unanimous consent of the States to amend the Articles of Confederation, and New York's refusal set even this aside. New York had no mind to relinquish the duties which she collected for herself at her great port,—not only upon foreign commerce but also upon goods brought out of the other States, her neighbors; on farm produce and garden-truck from New Jersey and firewood from Connecticut,—making her spreading harbor a veritable toll-gate.

"There was in all this one of the most serious signs of the times. The States indulged to the top of their bent a petty hostility towards each other. New York was by no means the only State that laid duties on merchandise brought in from the farms and shops of her neighbors. There was everywhere the same jealous spirit, the same striving for every paltry advantage, the same alert and aggressive selfishness; and the more the States deemed their interests antagonistic the more like a mere rope of sand did the Confederation become. 'We are either a united people, or we are not,' exclaimed Washington. 'If the former, let us in all matters of general concern act as a nation which has national character to support; if we are not, let us no longer act a farce by pretending it.' England, apparently, expected the weak structure presently to fall to pieces."

The Federalist, in discussing causes of friction likely to give rise to war between the States, at page 29, uses the following language:

"The competitions of commerce would be another fruitful source of contention. The States less favorably circumstanced would be desirous of escaping from the disadvantages of local situation, and of sharing in the advantages of their more fortunate neighbors. Each State, or separate confederacy, would pursue a system of commercial policy peculiar to itself. This would occasion distinctions, preferences, and exclusions, which would beget discontent. The habits of intercourse, on the basis of equal privileges, to which we have been accustomed from the earliest settlement of the country, would give a keener edge to those causes of discontent, than they would naturally have, independent of this circumstance. We should be ready to denominate injuries those things which were in reality the justifiable acts of independent sovereignties consulting

a distinct interest. The spirit of enterprise, which characterizes the commercial part of America, has left no occasion of displaying itself unimproved. It is not at all probable that this unbridled spirit would pay much respect to those regulations of trade by which particular States might endeavor to secure exclusive benefits to their own citizens. The infractions of these regulations on one side, the efforts to prevent and repel them on the other, would naturally lead to outrages, and these to reprisals and wars.

The opportunities which some states would have of rendering others tributary to them, by commercial regulations, would be impatiently submitted to by the tributary States. The relative situation of New York, Connecticut, and New Jersey would afford an example of this kind. New York, from the necessities of revenue, must lay duties on her importations. A great part of these duties must be paid by the inhabitants of the two other states in the capacity of consumers of what we import. New York would neither be willing nor able to forego this advantage. Her citizens would not consent that a duty paid by them should be remitted in favor of the citizens of her neighbors; nor would it be practicable, if there were not this impediment in the way, to distinguish the customers, in our own markets. Would Connecticut and New Jersey long submit to be taxed by New York for her exclusive benefit? Should we be long permitted to remain in the quiet and undisturbed enjoyment of a metropolis, from the possession of which we derived an advantage so odious to our neighbors, and, in their opinion, so oppressive? Should we be able to preserve it against the incumbent weight of Connecticut on one side, and the co-operating pressure of New Jersey on the other? These are questions that temerity alone will answer in the affirmative."

In the case of *Gibbons v. Ogden*, 9 *Wheat.* 1, 6 *L. ed.* 23, Judge Marshall, in delivering the opinion of the court, announced that the power of Congress to regulate interstate commerce has no limitation except such as is found in the constitution itself.

In the case of *Brown v. Maryland*, 12 *Wheat* 420, 6 L. ed. 678, Mr. Justice Marshall used the following language:

> "The oppressed and degraded state of commerce previous to the adoption of the constitution can scarcely be forgotten. It was regulated by foreign nations with a single view to their own interests; and our disunited efforts to counteract their restrictions were rendered impotent by want of combination. Congress, indeed, possessed the power of making treaties; but the inability of the federal government to enforce them had become so apparent as to render that power in a great degree useless. Those who felt the injury arising from this state of things, and those who were capable of estimating the influence of commerce on the prosperity of nations, perceived the necessity of giving the control over this important subject to a single government. It may be doubted whether any of the evils proceeding from the feebleness of the federal government contributed more to the great revolution which introduced the present system, than the deep and general conviction that commerce ought to be regulated by Congress. It is not, therefore, matter of surprise, that the grant should be as extensive as the mischief, and should comprehend all foreign commerce and all commerce among the states. To construe the power so as to impair its efficacy, would tend to defeat an object, in the attainment of which the American public took, and justly took, that strong interest which arose from a full conviction of its necessity.

"What, then, is the just extent of a power to regulate commerce with foreign nations, and among the several states?

"This question was considered in the case of *Gibbons v. Ogden* (9 Wheat. Rep. 1), in which it was declared to be complete in itself, and to acknowledge no limitations other than are prescribed by the constitution. The power is co-extensive with the subject on which it acts, and cannot be stopped at the external boundary of a State, but must enter its interior.

"We deem it unnecessary now to resort to any part of these propositions. Their truth is proved by facts continually before our eyes, and was, we think, demonstrated, if they could require demonstration, in the case already mentioned."

The defendant in error claims that such of the acts were passed by the Legislature of the State of Louisiana in the exercise of the legitimate police power of the state, for the purpose of preserving its natural resources.

In the case of *McReady v. Virginia*, 94 U. S. 391, 24 L. ed. 248, the State of Virginia passed an act to prevent a non-resident of the state from planting oyster beds in the waters of the state. The appellant, a resident of Maryland, violated the law, was convicted, and on the assertion of federal rights, appealed to the Supreme Court of the United States. The conviction was affirmed in the following language:

"Following, then, this salutary rule, and looking only to the particular right which is here asserted, we think we may safely hold that the citizens of one state are not invested by this clause of the Constitution with an interest in the common property of the citizens of another state. If Virginia had by law provided for the sale of its own vast public domain,

and a division of the grounds among its own people, no one, we venture to say, would contend that the citizens of other states had a constitutional right to the enjoyment of the privileges of Virginia citizenship. Neither if, instead of selling, the state had appropriated the same property to be used as a common by its people for the purposes of agriculture, could the citizens of other states avail themselves of such a privilege. And the reason is obvious; the right thus granted is not a privilege or immunity of general but of special citizenship. It does not 'belong of right to the citizens of all free governments,' but only to the citizens of Virginia, on account of the peculiar circumstances in which they are placed. They, and they alone, owned the property to be sold or used, and they alone had the power to dispose of it as they saw fit. They owned it not by virtue of citizenship merely, but of citizenship and domicile united; that is to say, by virtue of a citizenship confined to that particular locality.

"The planting of oysters in the soil covered by water owned in common by the people of the State is not different in principle from that of planting corn upon dry land held in the same way. Both are for the purpose of cultivation and profit; and if the state, in the regulation of its public domain, can grant to its own citizens the exclusive use of dry lands, we see no reason why it may not do the same thing in respect to such as are covered by water. And as all accounts that a state may grant to one of its citizens the exclusive use of a part of the common property, the conclusion would seem to follow that it might by appropriate legislation confine the use of the whole to its own people alone.

"Neither do we think this case is at all affected by the clause of the Constitution which confers power on Congress to regulate commerce. Art. I., Sec. 8. There is here no question of transportation

or exchange of commodities, but only of cultivation and production. Commerce has nothing to do with land while producing, but only with the product after it has become the subject of trade. Virginia, owning land under water adapted to the propagation and improvement of oysters, has seen fit to grant the exclusive use of it for that purpose to the citizens of the state. In this way, the people of Virginia may be enabled to produce what the people of the other states can not; but that is because they own property which the others do not. Their productions do not spring from commerce, but commerce to some extent from them.

"We are unable to agree with the counsel for the plaintiff in error in this argument, that the right of planting may be enforced as a privilege of interstate citizenship, even though that of taking can not. 'Planting means, in 'oysterman's phraseology,' as counsel say, 'depositing with the intent that their oysters shall remain until they are fattened.' The object is, therefore, to make use of the soil and the water above it for the improvement and growth of that which is planted. It is this use, as has already been seen, that the State has the right, by reason of its ownership, to prohibit. The judgment is affirmed."

It will be noted that in that case no question of interstate commerce was involved, since the Act was directed against planting oyster beds, and had no reference to sale or transportation of oysters.

In the case of *Geer v. State of Connecticut*, 161 U. S. 519, 40 L. ed. 793, it appeared that a statute had been passed forbidding the killing of birds within the State of Connecticut, and also making unlawful the possession of such birds within the state for the purpose of transportation beyond the limits thereof. A demurrer was

sustained to that portion of the indictment charging the defendant with having unlawfully killed the birds, because the indictment showed that the same were killed during the open season permitted by the statute. The court overruled the defendant's demurrer to that portion of the indictment charging that he had in his possession with the intent to ship beyond the limits of the state the birds in violation of the statute. The court held that the state held title as trustee for the people to the bird life within the state, and that it could regulate the sale and distribution thereof within the state. In other words, in order to preserve the birds as a food for its people it could prevent the transportation thereof beyond the limits of the state. The opinion is predicated solely upon the philosophy that the legislative enactment complained of was a declaration on the part of the people of the state that it was to the interest of the state that the birds as a food be kept within the state for the common use of the people thereof. Mr. Chief Justice White, who delivered the opinion for the court, formulated the proposition in the following language:

> "The court found that the information did not charge the first of these offenses, and therefore that the sole offense which it covered was the latter. It then decided that the state had power to make it an offense to have in possession, for the purpose of transportion beyond the state, birds which had been lawfully killed within the state during the open season, and that the statute, in creating this offense, did not violate the interstate commerce clause of the Constitution of the United States. The correctness of this latter ruling is the question for review. In other words, the sole issue which the case presents is, Was it lawful under U. S. Const. Art. 1, Sec. 8, for the State of Connecticut to allow the killing of birds within the state during a designated open season, to allow such birds, when so killed, to be used, to be sold, and to be bought for use within the state,

and yet to forbid their transportation beyond the state? Or, to state it otherwise, had the state of Connecticut the power to regulate the killing of game within her borders so as to confine its use to the limits of the state and forbid its transmission outside of the state?"

After reviewing the Roman and English law upon the subject, the Chief Justice announced that the principles thereof were applicable to the colonies at the time of the formation of this government and became the law of the states forming the union using the following language:

> "Undoubtedly this attribute of government to control the taking of animals *ferae naturae*, which was thus recognized and enforced by the common law of England, was vested in the colonial governments, where not denied by their charters, or in conflict with grants of the royal prerogative. It is also certain that the power which the colonies thus possessed passed to the states with the separation from the mother country, and remains in them at the present day, in so far as its exercise may be not incompatible with, or restrained by, the rights conveyed to the Federal Government by the Constitution."

It will be noted, however, that the Constitution of the United States and the Acts of Congress passed in pursuance thereof had become and were the supreme law of the land, and the Chief Justice was careful to point out that such principles only became applicable and were enforceable in the states except as the same conformed to the paramount law. The court then announced the reason upon which the determination rests, that is to say, that a state could prohibit and regulate the taking and the sale within the state of birds or game in pursuance of its

trusteeship, out of which grew its right to preserve birds or game for the benefit of the people in the state. The court used the following language:

> "Whilst the fundamental principles upon which the common property in game rests have undergone no change, the development of free institutions has led to the recognition of the facts that the power or control lodged in the state, resulting from this common ownership, is to be exercised like all other powers of government as a trust for the benefit of the people, and not as a prerogative for the advantage of the government as distinct from the people, or for the benefit of private individuals as distinguished from the public good. Therefore, for the purpose of exercising this power, the state, as held by this court in *Martin v. Waddell*, 41 U. S. 16 Pet. 410 (10: 1012), represents its people, and the ownership is that of the people in their united sovereignty. The common ownership, and its resulting responsibility in the state, are thus stated in a well considered opinion of the supreme court of California: 'The wild game within a state belongs to the people in their collective sovereign capacity. It is not the subject of private ownership, except in so far as the people may elect to make it so; and they may, if they see fit, absolutely prohibit the taking of it, or any traffic and commerce in it, if deemed necessary for its protection or preservation, or the public good.' *Ex Parte Maier, ubi supra.*
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> "The same view has been expressed by the Supreme Court of Minnesota as follows:
>
> " 'We take it to be the correct doctrine in this country that the ownership of wild animals, so far as they are capable of ownership, is in the state, not as proprietor but in its sovereign capacity, as the representative and for the benefit of all its people in common.' *State v. Rodman, supra.*

"The foregoing analysis of the principles upon which alone rests the right of an individual to acquire a qualified ownership in game, and the power of the state, deduced therefrom, to control such ownership for the common benefit, clearly demonstrates the validity of the statute of the state of Connecticut here in controversy. The sole consequence of the provision forbidding the transportation of game killed within the state, beyond the state, is to confine the use of such game to those who own it, the people of that state. The proposition that the state may not forbid carrying it beyond her limits involves, therefore, the contention that a state cannot allow its own people the enjoyment of the benefits of the property belonging to them in common, without at the same time permitting the citizens of other states to participate in that which they do not own. It was said in the discussion at bar, although it be conceded that the state has an absolute right to control and regulate the killing of game as its judgment deems best in the interest of its people, inasmuch as the state has here chosen to allow the people within her borders to take game, to dispose of it, and thus cause it to become an object of state commerce, as a resulting necessity such property has become the subject of interstate commerce, hence controlled by the provisions of U. S. Const. Art. 1, Sec. 8. But the errors which this argument involves are manifest. It pre-supposes that where the killing of game and its sale within the state are allowed, it thereby becomes commerce in the legal meaning of that word. In view of the authority of the state to affix conditions to the killing and sale of game, predicated as is this power on the peculiar nature of such property and its common ownership by all the citizens of the state, it may well be doubted whether commerce is created by an authority given by a state to reduce game within its borders to possession, provided such game

be not taken, when killed, without the jurisdiction of the state. The common ownership imports the right to keep the property, if the sovereign so chooses, always within its jurisdiction for every purpose. The qualification which forbids its removal from the state necessarily entered into and formed part of every transaction on the subject, and deprived the mere sale or exchange of these articles of that element of freedom of contract and of full ownership which is an essential attribute of commerce. Passing, however, as we do, the decision of this question, and granting that the dealing in game killed within the state, under the provisions in quesion, created internal state commerce, it does not follow that such internal commerce became necessarily the subject-matter of interstate commerce, and therefore under the control of the Constitution of the United States. The distinction between internal and external commerce and interstate commerce is marked, and has always been recognized by this court. "

The Chief Justice made it perfectly apparent that the principles announced rest solely and only upon the right of the state, for the use and benefit of the people, to keep the birds or animals within the limits of the state. Such is made abundantly clear from the following language contained in the opinion:

"In *State v. Rodman*, 58 Minn. 393, the supreme court of Minnesota said:

" 'The preservation of such animals as are adapted to consumption as food or to any other useful purpose, is a matter of public interest, and it is within the police power of the state, as the representatives of the people in their united sovereignty, to make such laws as will best preserve such game, and secure its beneficial use in the future to the

citizens, and to that end it may adopt any reasonable regulations, not only as to time and manner in which such game may be taken and killed, but also imposing limitations upon the right of property in such game after it has been reduced to possession. Such limitations deprive no person of his property, because he who takes or kills game had no previous right to property in it, and when he acquires such right by reducing it to possession he does so subject to such conditions and limitations as the legislature has seen fit to impose.' See also *State v. Northern P. Exp. Co.* 58 Minn. 403.

"So also in *Magner v. People,* 97 Ill. 320, the supreme court of Illinois said:

" 'So far as we are aware, it has never been judicially denied that the government under its police powers may make regulations for the preservation of game and fish, restricting their taking and molestation to certain seasons of the year, although laws to this effect, it is believed, have been in force in many of the older states since the organization of the Federal government . . . . . The ownership being in the people of the state, the repository of the sovereign authority, and no individual having any property rights to be affected, it necessarily results that the legislature, as the representatives of the people of the state, may withhold or grant to individuals the right to hunt and kill game or qualify or restrict, as in the opinions of its members will best subserve the public welfare. Stated in other language, to hunt and kill game is a boon or privilege, granted either expressly or impliedly by the sovereign authority, not a right inherent in each individual, and consequently nothing is taken away from the individual when he is denied the privilege at stated seasons of hunting and killing game. It is perhaps accurate to say that the ownership of the

sovereign authority is in trust for all the people of the state, and hence by implication it is the duty of the legislature to enact such laws as will best preserve the subject of the trust and secure its beneficial use in the future to the people of the state. But in any view, the question of individual enjoyment is one of public policy and not of private right."

In respect to the application of these principles to the commerce clause of the Constitution of the United States, the court held that interstate commerce was only remotely affected, using the following language:

"Aside from the authority of the state, derived from the common ownership of game and the trust for the benefit of its people which the state exercises in relation thereto, there is another view of the power of the state in regard to the property in game, which is equally conclusive. The right to preserve game flows from the undoubted existence in a state of a police power to that end, which may be none the less efficiently called into play because by doing so interstate commerce may be remotely and indirectly affected. *Kidd v. Pearson*, 128 U. S. 1 (32: 346), 2 Inters. Com. Rep. 232; *Hall v. De Cuir*, 95 U. S. 485 (24: 547); *Sherlock v. Alling*, 93 U. S. 99, 103 (23: 819, 820); *Gibbons v. Ogden*, 22 U. S. 9 Wheat. 194 (6: 69). Indeed, the source of the police power as to game birds (like those covered by the statute here called in question) flows from the duty of the state to preserve for its people a valuable food supply. *Phelps v. Racey*, 60 N. Y. 10, 19 Am. Rep. 140; *Ex Parte Maier*, ubi supra; *Magner v. People*, ubi supra, and cases there cited. The exercise by the state of such power therefore comes directly within the principle of *Plumley v. Massachusetts*, 155 U. S. 461, 473 (39: 223, 227). The power of a state to protect by adequate police regulation its people against the adulteration of articles of food (which

was in that case maintained), although in doing so commerce might be remotely affected, necessarily carries with it the existence of a like power to preserve a food supply which belongs in common to all the people of the state, which can only become the subject of ownership in a qualified way, and which can never become the object of commerce except with the consent of the state and subject to the conditions which it may deem best to impose for the public good."

We make no attack upon the correctness of this opinion. We will, however, call the attention of the Court to the fact that of the nine members of the Court, Mr. Justice Brewer and Mr. Justice Peckham, took no part in the decision of the case; that the opinion written by the Chief Justice was concurred in by four of the Justices participating in the decision of the case. That strong dissenting opinions were rendered by Mr. Justice Field and Mr. Justice Harlan. Mr. Justice Field used the following language:

> "In an opinion written by me some years since I had occasion to speak of this rule of law. I there said that it was a general principle of law, both natural and positive, that where a subject, animate or inanimate, which otherwise could not be brought under the control or use of man, is reduced to such control or use by his individual labor or skill, a right of property in it is acquired. The wild bird in the air belongs to no one, but when the fowler brings it to the earth and takes it into his possession it is his property. He has reduced it to his control by his own labor, and the law of nature and the law of society recognize his exclusive right to it. The pearl at the bottom of the sea belongs to no one, but the diver who enters the water and brings it to light has property in the gem. He has by his own labor reduced it to possession, and in all communities and by all law

his right to it is recognized. So the trapper on the plains and the hunter in the north have a property in the furs they have gathered, though the animals from which they were taken roamed at large and belonged to no one. They have added by their labor to the uses of man an article promoting his comfort, which, without that labor, would have been lost to him. They have a right, therefore, to the furs, and every court in Christendom would maintain it. So when the fisherman drags by his net fish from the sea, he has a property in them, of which no one is permitted to despoil him. *Spring Valley Water Works v. Schottler*, 110 U. S. 374, (28: 183).

"In *State v. Saunders*, 19 Kan. 127, 27 Am. Rep. 98, the defendant was charged, as the agent of the Adams Express Company, with receiving at Columbus, Kansas, 'certain prairie chickens, which had been recently killed as game', and shipping them to the city of Chicago, in the state of Illinois. The statute under which he was prosecuted made it unlawful for any person to transport or to ship any animals or birds mentioned, among which were prairie chickens, out of the state of Kansas, and subjected him on conviction thereof to a fine of not less than ten nor more than fifity dollars. The defendant admitted the facts as alleged, but contended that such acts constituted no offense, claiming that the statute of the state under which the proceedings against him were commenced were unconstitutional and void. The district court held the statute valid, and found the defendant guilty, and sentenced him to pay a fine of $10.00 and costs of prosecution. From the conviction and sentence he appealed to the supreme court of Kansas, which reversed the judgment of the district court, holding "that no state can pass a law (whether Congress has already acted upon the subject or not) which

will directly interfere with the free transportation from one state to another, or through a state, of anything which is or may be a subject of interstate commerce;' and referred to the case of *Welton v. Missouri*, 91 U. S. 275, 282, (23: 347, 350), where it was held by this court that 'the fact that Congress has not seen fit to prescribe any specific rules to govern interstate commerce does not affect the question; its inaction on this subject, when considered with reference to its legislation with respect to foreign commerce, is equivalent to a declaration that interstate commerce shall be free and untrammeled.'

"I do not doubt the right of the state, by its legislation, to provide for the protection of wild game, so far as such protection is necessary for their preservation or for the comfort, health, or security of its citizens, and does not contravene the power of Congress in the regulation of interstate commerce. But I do deny the authority of the state, in its legislation for the protection and preservation of game, to interfere in any respect with the paramount control of Congress in prescribing the terms by which its transportation to another state, when killed, shall be restricted to such conditions as the state may impose. The absolute control of Congress in the regulation of interstate commerce, unimpeded by any state authority, is of much greater consequence than any regulation the state may prescribe with reference to the place where its wild game, when killed, may be consumed.

"When property, like the game birds in this case, is reduced to possession it becomes an article of commerce, and may be the subject of sale to the citizens of one state or community, or to the citizens of several. The decision of the court, however, would limit the right of sale of

such property, however valuable it may become, and whether living or killed, to the directions of the state or community in which the property is found, and would convert it from the freedom of use which belongs to property in general to the limited use of the persons or communities where found, or to a particular class to which only property possessed of special ingredients or qualities is limited. I do not think it lies within the province of any state to confine the assimilation of any articles of food within its borders to its own fortunate inhabitants to the exclusion of others, and that it may lawfully require that game killed within its borders shall only be eaten in such parts of the country as it may prescribe.

"By the Constitution of the United States it has been adjudged that commerce between the states is under the absolute regulation of Congress, and that whenever an article of property begins to move from one state to another, commerce between the states has commenced, and that with its control or regulation no state can interfere. *Welton v. Missouri*, 91 U. S. 275 (23: 347); *Henderson v. Wickham*, 92 U. S. 259 (23: 543); *Chy Lung v. Freeman*, 92 U. S. 275 (23: 550); *Ward v. Maryland*, 79 U. S. 12 Wall. 418 (20: 449); *Philadelphia & R. R. Co. v. Pennsylvania* ('the State Tax on Railway Gross Receipts') 82 U. S. 15 Wall. 284 (21: 164); *Sherlock v. Alling*, 60, U. S. 69 (23: 819)."

Mr. Justice Harlan used the following language:

"The plaintiff in error was not charged with having in his possession game that had been killed 'for the purpose of conveying the same beyond the limits of the state.' It is admitted that the game in question was lawfully killed, that is, was killed during what was called the 'open season.'

that the charge was that the defendant unlawfully received and had in his possession, with the wrongful and unlawful intent to prevent the transportation of the same beyond the limits of the state, certain woodcock, ruffled grouse, and quail killed within the state after the 1st day of October.

"I do not question the power of the state to prescribe a period during which wild game within its limits may not be lawfully killed. The state, as we have seen, does not prohibit the killing of game altogether, but permits hunting and killing of woodcock, quail, ruffled grouse and pinnated grouse between the 1st day of October and the 1st day of January. The game in question having been lawfully killed, the person who killed it and sold it into his possession became the rightful owner thereof. This, I take it, will not be questioned. As such owner he could dispose of it to sell or sale, at his discretion. So long as it was in his or use as food, the state could not interfere with his disposition of it, any more than it could interfere with the disposition by the owner of other personal property that was not noxious to its inhabitants. To hold that the person receiving personal property from the owner may not receive it with the intent to send it out of the state is to recognize an arbitrary power in the government which is inconsistent with the liberty belonging to every man, as well as with the rights which inhere in the ownership of property. Such a holding would also be inconsistent with the freedom of interstate commerce which has been established by the Constitution of the United States. If the majority had not held differently in the present case, I should have said that the decision was unnecessary to show the soundness of the propositions just stated. But it seems that if the citizens, whether residing in Connecticut or elsewhere, finds in the markets of one of the cities

and treasurer, hereinafter referred to as the second party, on this the 2nd day of January, 1928, as follows, witnesseth:

That whereas, said Sea Food Company is a corporation organized and existing under and by virtue of the laws of the State of Louisiana with authority derived from its charter to catch, fish, buy, sell oysters and shrimp in the State of Louisiana, and to import and export such oysters and fish to and from the State of Louisiana, and

Whereas, the party of the first part is engaged in the canning of oysters in the City of Biloxi, Harrison County, Mississippi, and further engaged in the opening of oysters for sale raw and in the shipment of oysters to customers in various states in their raw and natural state, and

Whereas, in order to successfully carry on this business, said first party has need of a large and plentiful supply of oysters and the said second party is in a position to supply said oysters to said first party, now, therefore, in consideration of the premises and the sum of one dollar mutually paid by each party hereto to the opposite party, and of the future benefits and profits running to each party of this agreement from the opposite party and from the agreement itself, said parties do agree as follows:

That during the oyster season of 1928, including all months during the year 1928, in which oysters are allowed to be caught in the State of Louisiana, the first party agrees to purchase from the second party and the said second party agrees to sell and deliver at Biloxi, Mississippi, or to such other points in Mississippi as may be designated by said first party from the said second party oysters in the shell to the extent of 1,000 barrles per day for each day during said season, except Sundays and holidays.

Upon delivery of said oysters by said second party to the wharf of the said first party in Biloxi, Mississippi, or [fol. 42] on board boats or other craft designated by said first party at such place in Mississippi as may be later agreed upon between the parties hereto, the said first party agrees to pay to said second party the following prices for said oysters, that is, the said first party will pay said second party for all steam oysters delivered to him at the places herein mentioned the prevailing market price of said oysters in Biloxi, Mississippi, on the day of delivery of said oysters to said first party, and to pay to said sec-

ond party for all raw oysters delivered by it at Biloxi, Mississippi, or elsewhere, what may be the prevailing market price for raw oysters in Biloxi, Mississippi, on the day of the delivery of said oysters, in accordance with the terms of this agreement.

It is further agreed between the parties hereto that the word "barrel" mentioned herein shall be construed to mean a barrel of the size and quantity that is now and has customarily been used in Biloxi, Mississippi, as a measure in the purchase and sale of oysters.

It is further agreed between the parties hereto that in the event the said first party desires any of the oysters herein mentioned to be delivered to piers or factories other than the factory of the first party, that upon being requested in writing, the said second party will make delivery to any designated pier in Biloxi, Mississippi, that can be reached by schooner or freight boats of the capacity usually used in Biloxi, Mississippi, but in no event shall delivery be required at any point in Mississippi Sound further east than Biloxi, Mississippi.

It is further agreed between the parties hereto that all oysters delivered are to be paid for on the day next succeeding the date of the delivery of said oysters.

It is further agreed between the parties hereto that in making delivery of said oysters the said second party shall have the right to require the use of any of the power boats owned by the first party, and which are not required to be used by the said first party in carrying on his business in the State of Mississippi, provided that if such boats are so used by the said second party then a reasonable rental for said boats shall be paid by said second party to said first party.

Witness our signatures at Biloxi, Mississippi, this the 12th day of January, A. D. 1928.

L. O. Johnson, Jr., Sea Food Company, Per A. R. Heidenheim, Secty.

[fol. 43] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TO SHOW CAUSE AND ASSIGNING CAUSE TO BE HEARD BEFORE THREE JUDGES—Filed Jan. 20th, 1928

Upon consideration of the foregoing Bill of Complaint with its affidavits and exhibits;

It is ordered by the Court that the defendant in said Bill of Complaint Do Show Cause on the 26th day of January, 1928, at eleven o'clock, A. M. at New Orleans, La., why an interlocutory injunction pendente lite should not issue as prayed for in said Bill of Complaint herein;

And the Court considering that said application for an interlocutory injunction should be heard and determined by three Judges and having requested the Honorable Rufus E. Foster, U. S. Circuit Court Judge, and the Honorable Edwin R. Holmes and the Honorable Louis H. Burns, District Court Judges to assist in hearing and determining said application:

It is ordered that this cause be sent down for hearing before the Honorable Rufus E. Foster, Judge of the Circuit Court of Appeals, and the Honorable Edwin R. Holmes and Honorable Louis H. Burns, Judges of the United States District Court, at New Orleans, La., on the 26th day of January, 1928, at 11:00 o'clock, A. M., on complainant's said application for a preliminary injunction.

It is further ordered that the Governor and the Attorney General of the State of Louisiana, and all the other parties of record herein be notified of this order.

New Orleans, La., January 20th, 1928.

(Sgd.) Louis H. Burns, Judge.

[fol. 44] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF INTERVENTION OF TANOS HERBERT AND CHARLES BORDEAU—Filed Jan. 26, 1928

To the Honorable District Court of the Eastern District of the State of Louisiana, at New Orleans sitting:

Comes Tanos Herbert and Charles Bordeau, citizens of Jeanerette, Parish of Iberia, State of Louisiana, now temporarily working and residing at Biloxi, Mississippi, and with respect show unto the Court as follows:

That both petitioners are adults and natives and citizens of the State of Louisiana, said petitioners having resided at or near Jeanerette, Louisiana, for over forty years, and their fathers and grandfathers having resided in said Parish since the earlier Canadians came to Louisiana from Canada.

Petitioners would further show unto the Court that they appear in the above styled cause in behalf of themselves, appearing therein for the purpose of requesting of this Honorable Court that they may be permitted to intervene in the above styled and entitled cause as a party complainant adopting each and every allegation of the original bill of complaint herein in behalf of themselves as an original bill of complaint with the same effect and the same purpose as if each and every statement, allegation and charge made in said bill of complaint was herein set forth in behalf of petitioners, and petitioners therefore respectfully show unto the Court as follows:

[fol. 45] First

That petitioners and as well as their fore-parents for many generations back, have for years been engaged in the cultivation of cane in the Parish of Iberia, in the State of Louisiana; that about three or four years ago on account of disease which had been prevalent among the cane industry, and on the cane farms of Louisiana, the production of cane fell off to such an extent that the territory in and around the Parish of Iberia was wholly incapable of sup-

porting a large number of the inhabitants of said territory; that petitioners and the class which they represent endeavored to find work in Louisiana, their home, but were unable to find such work either in the cane industry or in the oyster industry of Louisiana; that the situation of Louisiana with reference to water and proximity of high land to the oyster beds is such that no oysters to any great extent have been packed in Louisiana, but that it has been found to be more economical there to pack and ship oysters caught in Louisiana on certain parts of the Gulf Coast of Mississippi;

That in looking around for a means of livelihood being faced with the absolute necessity of securing work or starving, your petitioners were able to secure employment at Biloxi, Mississippi, where they have since resided, making a living out of the oyster industry in Louisiana and living at Biloxi, Mississippi, with the expectation and thought of returning to their native home, if, at any time, economic conditions there were such as to afford them a means of livelihood; neither petitioners nor any of the class which they represent, have in anywise become citizens of Mississippi, but still claim to and hold their citizenship in Louisiana with the desire to return when opportunity affords.

Second.

That petitioners for over one year past have been in the employment of the Sea Food Company of Biloxi, Mississippi, and for said Sea Food Company have fished oysters [fol. 46] in the State of Louisiana, that petitioners as citizens of Louisiana under the laws of the State of Louisiana, have the right to fish oysters in these waters but these oysters would be valueless to petitioner unless they are able to sell them to the Sea Food Company for the purpose of the removal to the point of the Sea Food Company, or to some other oyster plant in Biloxi, Mississippi, for the reason that there being only two oyster factories in operation in Eastern Louisiana, the supply of oysters at the present time is too great for these factories to can, and were petitioners and the class which they represent, citizens of Louisiana, to continue catching oysters for sale in

Louisiana, the oysters would be valueless as petitioners could find no market for said oysters and no reward for their labor.

Third.

That petitioners are informed that the Sea Food Company has a contract with one L. O. Johnson, Jr., of Biloxi, Mississippi, whereby a large number of oysters each day can be imported by the Sea Food Company to sell said L. O. Johnson, Jr.; that if the Sea Food Company can bring these oysters from the State of Louisiana to the State of Mississippi in compliance with its said contract with said L. O. Johnson, Jr., then the said Sea Food Company will be able to give work to your petitioners and to purchase from your petitioners their catch of Louisiana oysters, thereby yielding to your petitioners *and*, a fair return for their labor and an opportunity to earn a livelihood in the one business outside of the cane business with which they are familiar.

Fourth.

Petitioners would further show unto the Court that the above condition affects at least one thousand persons of French parentage, citizens of Louisiana, who now reside at Biloxi, Mississippi, and that unless the Sea Food Company and other similar situated concerns can obtain oysters in [fol. 47] Louisiana for shipment to Mississippi, that the means of livelihood of these persons will be cut off and there will be dire distress and suffering on the part of this class of persons for the reason that, at this time, there is no work on the plantations in Louisiana and no employment for this class of persons in the present existing oyster factories of Louisiana, that some of the person herein mentioned are employed actually catching the oysters in Louisiana and that the children, wives and older members of the family are employed in opening the oysters in Biloxi, Mississippi, which are caught in Louisiana, and that therefore, petitioners and the class which they represent, are not only vitally interested in the results of the above entitled and numbered cause, but are interested to the extent that their means of livelihood and sustenance depends upon the results of said law suit, this interest in the aggregate amount-

ing to thousands of dollars and being as important to petitioners as it is to the original complainants in the bill of complaint.

Fifth

Petitioners would further show unto the Court that being citizens of Louisiana, that they are entitled to catch oysters in the water of the State of Louisiana, this being an inalienable right of fishing vested in every citizen of Louisiana, and unless these oysters can be transported from the state they will have no commercial value, as the sole purpose for which oysters have been caught in the past on the natural reefs of Louisiana is to sell the same in interstate commerce, and to export the same from the State of Louisiana, very few of said oysters which have been packed, being consumed in the State of Louisiana.

Sixth

Petitioners would further show unto the Court that while they are being deprived of the right to take oysters to Mis- [fol. 48] sissippi from said State, that other more favored citizens of Louisiana are being allowed to ship these raw oysters to points outside of the State for the purpose of being used in restaurants, dining cars and on lunchstands, and therefore, the present law of the State of Louisiana as it is being administered is to discriminate against petitioners and as citizens of said state, and to deny to said petitioners the equal protection afforded by the laws of said state to other citizens; that this condition effects not only those persons who work for the Sea Food Company but effects hundreds of other persons employed by each of the factories in Biloxi, Mississippi, for the reason that unless oysters are brought in to the various factories of Biloxi, it will result in citizens of Louisiana being deprived of their right to fish oysters in Louisiana, and deprived of their right to sell these oysters the result of their labor to the only market that is presently open to said class of persons.

Wherefore, premises considered, petitioners respectfully pray that this their petition of intervention may be received and filed, that petitioners are on behalf of themselves may be given leave to adopt the original bill of complaint herein as their bill of complaint, amended by the facts set forth

in this petition, and that upon a hearing that the preliminary restrained order obtained in the original cause may be extended to all boats in Biloxi operated or manned by petitioners, and that the temporary injunction prayed for in the original bill of complaint may extend not only to the original complainants but to petitioners, and to the factories employing petitioners, and that upon a final hearing of this cause provided petitioners are admitted to intervene herein, that this Honorable Court will perpetually enjoin the defendants named in the original bill of complaint for interfering with petitioners, in their catching of oysters in the State of Louisiana and their disposal of oysters in [fol. 49] interstate commerce outside of said state, and that all process heretofore had upon all the defendants in the original suit herein may be taken as having been had on behalf of these petitioners and if such full and necessary relief as may be had by petitioners is not herein prayed for then for such other, further and general relief as in equity and good conscience petitioners *and* —

(Signed) Tanos Hebert, Charles (his X mark) Bordeau.

Witness: (Sgd.) Bert O. Gunn.

Duly sworn to by Tanos Hebert and Charles Bordeau; jurat omitted in printing.

IN UNITED STATES DISTRICT COURT

[Title omitted]

[fol. 50] ORDER PERMITTING PETITION OF INTERVENTION OF TANOS HEBERT AND CHARLES BORDEAU TO BE FILED— Filed Jan. 26, 1928

Coming on to be heard the petition of Louis Hebert and Charles Bordeau for permission to intervene as party complainants herein and the Court having considered the same and it appearing that these parties are citizens of the State of Louisiana and that both said parties are interested in the outcome of this suit and that this interest is as great

as the interest of the parties complainant and that therefore are necessary parties to this litigation;

It is therefore ordered and adjudged that said petition may be filed, and that the said Louis Hebert and Charles Bordeau do have all the rights of a party complainant herein to plead, offer proof and participate herein as if said parties were original complainants.

It is further ordered that the restraining order heretofore issued herein accrue to the benefit of the said petitioners.

Ordered, adjudged and decreed this 26th day of January A. D., 1928.

(Signed) Rufus E. Foster, U. S. Circuit Judge. E. R. Holmes, U. S. District Judge. Louis H. Burns, U. S. District Judge.

[fol. 51] IN UNITED STATES DISTRICT COURT

[Title omitted]

DECREE GRANTING TEMPORARY RESTRAINING ORDER—Filed Jan. 20, 1928.

This day this cause came on to be heard on the application of L. O. Johnson, Jr. and Sea Food Company, a Louisiana Corporation complainants for a Temporary Restraining Order. And it appearing to the Court that the Attorney General of the State of Louisiana has been duly notified of the making of said application. And the Court having considered the same, and being of the opinion that unless a Temporary Restraining Order is granted, Complainants will suffer irreparable harm, injury and damage, in that the Sea Food Company will be prevented from filling the contract which is entered into with Complainant L. O. Johnson, Jr. and that each of said Complainants will sustain great financial damage and that unless said restraining order shall issue, the enforcement officers of the State of Louisiana, would proceed with the enforcement of what is known as the Oyster act being Act No. 258, passed by the Louisiana Legislature, 1926 Session.

It is ordered, adjudged and decreed by the court that the Defendants and each of them be temporarily, pending a hearing or application for a preliminary injunction and are hereby, and enjoined and restrained from interfering with, or preventing the Sea Food Company from taking, catching or acquiring fresh oysters in the shell in the State of Louisiana, for the purpose of filling the contract made exhibit with the original Bill of Complaint, and the said defendants and each of them be, and are hereby restrained and enjoined from proceeding to or taking any steps to enforce said Act No. 258 passed for the Louisiana Legislature, and approved July 14th, 1926, which will in any manner interfere with Sea Food Company catching, acquiring and taking oysters in the shell from the State of Louisiana for the purpose of [fol. 52] shipment of fresh oysters in the shell from the State of Louisiana, and that the said defendants and each of them are restrained and enjoined from prosecuting under said Act the Agents, employees and Servants of the complainants, or either of them while so engaged and be enjoined and restrained from the seeking or attempting to seize or confiscate the property of said complainants or either of them, while so engaged.

It is further ordered, adjudged and decreed that the clerk of this Court issue this Temporary Restraining Order upon the Complainants entering into a good, and sufficient bond with surety to be approved by the Clerk of this Court, conditioned according to law, in the penal sum of Two Thousand ($2,000.00) Dollars, that this restraining order be served in the manner provided by law on the defendants and each of them, and that copy thereof be served upon the Governor of the State of Louisiana.

Ordered, Adjudged and decreed.

(Sdg.) Louis H. Burns, U. S. District Judge, Eastern District of Louisiana.

New Orleans, Louisiana.
January 20th, 1928.

[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION FOR INTERLOCUTORY INJUNCTION—Filed January 23, 1928

Come L. O. Johnson, Sr., and Seafood Company, complainants, by their attorneys, and show unto the Court that upon the 20th day of January, 1928, the Hon. Louis H. Burns, District Judge, granted the complainants a temporary restraining order, on the original bill of complaint filed in the above-entitled cause, and entered an order organizing a three-judge court to determine complainants' application for an interlocutory injunction, pending the hearing of said cause on the merits, returnable January 26, 1928.

Wherefore the complainants move the court, for the reasons set out in the original bill of complaint and affidavits filed and to be filed in support thereof, to grant an interlocutory injunction, as prayed for in the original bill of complaint, pending the final hearing of this cause.

(Signed) Watkins, Watkins & Eager, Attorneys for Complainants.

[fol. 54] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER AND EXCEPTION OF DEFENDANTS—Filed Jan. 26, 1928

And now into Court, through undersigned counsel come L. A. Mereaux (incorrectly nominated Louis A. Marks) Sheriff of St. Bernard Parish; Ernest Alberti, Sheriff of Plaquemines Parish; Leander H. Perez, District Attorney for the Parish of St. Bernard and Plaquemines; Percy Saint, Attorney General of the State of Louisiana; Dr. V. K. Irion, Commissioner of Conservation of the State of Louisiana; James N. McConnell, Director, Oyster Division, Department of Conservation of the State of Louisiana; E. J. Haydel, Fred Schouest, and L. R. Cabirac, employees of the Department of Conservation and for answer to the

rule taken by complainants herein, on January 20, 1928, to show cause why the defendants and each of them should not be enjoined and restrained from interfering with or preventing the Sea Food Company from taking, catching or acquiring fresh oysters in the shell in the State of Louisiana, as set forth in the bill of complaint, respond as follows:

Defendants except to the bill of complaint and for cause of exception say that said bill of complaint discloses no right or cause of action, which said exception of no cause or right of action is hereby specially pleaded by defendants herein. Further answering, defendants represent that they are officers of the State of Louisiana, charged with the responsibility of enforcing the laws of the State of Louisiana, *charged with the responsibility of enforcing the laws of the State of Louisiana,* and more particularly Act 258 of 1926, known as the Oyster Law of Louisiana.

It is further alleged that the beds and bottoms of the waters of the State of Louisiana, belong to the State by virtue of her inherent sovereignty and that the oysters raised and grown in said waters and upon said bottoms are the property of the State of Louisiana:

[fol. 55] "Subject to the paramount right of navigation each State owns the land under tide water within its jurisdiction and may appropriate it to the citizens for the taking and cultivating of fish;

"The right of fishery granted by a State to its citizens is a property right and not a mere privilege or immunity of citizenship;

"The constitutional guarantee of privileges and immunities does not vest citizens of one State with an interest in the common property right of fisheries of citizens of another State;

"The right to plant oysters is not a privilege of interstate citizenship and a law granting such right to citizens only is not commerce regulation; • • •

That by the provisions of Act 258 of 1926 the right of property in or — oysters is retained in the State of Louisiana in her sovereign capacity until there shall have been a compliance with each and every condition of said legislative act; and that under said legislative act, do not become an

article of interstate commerce until the title of the State of Louisiana is divested with full compliance with the provisions of said law.

Wherefore, defendants pray that the relief prayed for by complainants be denied and that the defendants be hence dismissed at complainant's costs.

(Signed) Percy Saint, Peyton Sandoz, Michael M. Irwin, John Dymond, Jr., L. H. Perez.

[fol 56] *Duly sworn to by Michael M. Irwin; jurat omitted in printing.*

CERTIFICATE OF COUNSEL

I consider the foregoing exception well founded in law and certify that the same is not filed for purposes of delay.

Attorneys for Defendants, (Sgd.) Michael M. Irwin, Asst. to the Atty. Gen. Percy Saint. Peyton Sandoz. Michael M. Irwin. John Dymond, Jr. L. H. Perez.

[fol. 57] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF ERNEST DESPORTE, JR., ON BEHALF OF PLAINTIFFS—Filed January 26th, 1928

[Title omitted]

Personally appeared before me, the undersigned authority a Notary Public in and for the City of Biloxi, Harrison County, Mississippi, Ernest Desporte, Jr., who being by me first duly sworn did depose and say:

That he is an adult resident of the City of Biloxi, Mississippi, and is engaged in said city in the packing of oysters and in the selling of raw oysters for the past fifteen years, and is thoroughly familiar with the raw oyster business as well as the packing business, and

That affiant knows of his own personal knowledge that when the so called Louisiana law went into effect on the first day of January, 1928, that the State of Louisiana commenced at once a most rigorous inforcement of this law

in so far as it effected oysters coming into Biloxi, Mississippi, for canning in the factories there and for sale in the raw shell at Biloxi; that said State established boats which patroled the waters of the Mississippi Sound and stopped any Biloxi boat in said waters for the purpose of ascertain-[fol. 58] ing if said boats were violating the laws in any respect;

That at the same time from the personal observation of affiant and from information conveyed to affiant by others, affiant knows that no attempt whatsoever was made by said officers to inforce said law in so far it effected the shipping of raw oysters by raw oyster dealers in New Orleans, who have since the first day of January been engaged in shipping these raw oysters in the shell without interruption, and in increasing amounts from the State of Louisiana to various parts of the United States;

That this raw oyster business in New Orleans is in direct competition with affiant's business and with the business of citizens of the State of Louisiana who own or are interested in the oyster factories and other businesses in the State of Mississippi.

That in addition to the above when persons residents of Biloxi licensed in the State of Louisiana to catch oysters in the State of Louisiana have attempted to catch Biloxi oysters in Louisiana for the purpose of selling same in New Orleans, they have been met with a boycott established by the New Orleans dealers for the reason that if any small amount of the Louisiana marsh oysters are carried into New Orleans it will speedily flood the New Orleans market, as the demand for raw oysters, while increasing, is wholly insufficient to take up the enormous catches that the Louisiana oyster bottoms will yield;

Affiant further says that at the present time in the Parishes of St. Bernard and Plaquemine there is a possibility of catching from five to ten thousand barrels of oysters a day without in the slightest manner of injuring the oyster beds, but that the two factories operating in these Parishes cannot use in excess one thousand barrels of oysters a day; that if the balance of the oysters are allowed to remain at the bottom of the water that they will not only not increase [fol. 59] in numbers but on account of the rapid growth of oysters in Louisiana will soon deteriorate and die from

inability of the water to sustain them, that, therefore, unless these oysters are caught by the Sea Food Company and others, that they will become wholly useless to the citizens of Louisiana as there is not now any market for the oysters within the territory where they are found; that because of this rapid growth in the past, many oyster reefs in Louisiana have become impossible of yielding marketable oysters, and for various reasons have died and gone out of existence as oyster reefs. In some parts of the State these reefs are found which will yield millions of barrels of dead oyster shells.

Affiant further says that for the above reason there is no necessity for the conservation of Louisiana of the oyster clutch, there being millions of barrels of large oyster shells, that is, dead shells that can be at any time utilized for this purpose.

Affiant further states that the State of Louisiana is selling dead oyster shells from these reefs at the price of two cents per cubic yard, whereas, if the shells are taken up with the live oysters in same, that the tax alone will yield twenty-one cents per cubic yard;

Affiant further says that the sole and only purpose of this law is to compel the canning of oysters in Louisiana; that at this time this would not only work a hardship on the Sea Food Company, the complainant herein, but that this hardship would be so great as to deprive the Sea Food Company of the possibility of profit for the reason that the general conditions governing the canning of oysters in Biloxi is so much more favorable than the conditions governing the canning of oysters in Louisiana; that these oysters can be canned in Louisiana only at a great economic loss;

Affiant further says that after the oyster is opened in [fol. 60] Louisiana for canning purposes, that the entire oyster as well as the shell is either exported from the State or else the shell part of the oyster is utilized for some purpose of small, if any, economic value.

Affiant further says that the Mississippi oyster reefs are situated in the Mississippi Sound near or adjacent to the Channel from Pearl River, and that, at this time, the United States Government intends to construct a spillway at Bannecarre, Louisiana, the effect of which will be in flood times

to turn loose billions of gallons of fresh water into the Mississippi Sound, seriously threatening the destruction of the Mississippi oyster reefs; that should this work be done, the entire oyster industry in Mississippi will be destroyed in order that sound protection be given the City of New Orleans, resulting in the removing of considerable people from the Mississippi Coast, where they are pleasantly and profitably situated at this time, to a place of almost intolerable living in Louisiana.

And further affiant sayeth not.

(Signed) E. Desporte, Jr.

Sworn to and subscribed before me, this the 24th day of January, A. D. 1928. (Signed) A. S. Mevelo, Notary Public. (Seal.)

[fol. 61] AFFIDAVIT OF MRS. ANNA R. HEIDENHEIM ON BEHALF OF PLAINTIFF—Filed January 26, 1928

(The exhibits attached to this affidavit transmitted in the original by order of Court.)

[Title omitted]

Personally appeared before me, the undersigned authority, A Notary Public in and for the City of Biloxi, Harrison County, Mississippi, Mrs. Anna R. Heidenheim, who being by me first duly sworn did depose and say:

That she is Secretary and Treasurer of the Sea Food Company, a corporation organized under the laws of the State of Louisiana, and also is Manager of the plant of the Sea Food Company at Biloxi, Mississippi, and she is very familiar with the oyster business and particularly with the oyster industry of Louisiana;

Affiant further says that the Sea Food Company of Louisiana is domiciled in New Orleans, Louisiana, and that the charter attached to the bill of complaint in the above styled cause as an exhibit is a copy of the charter under which said company operates; that the contract annexed to the bill of complaint as an exhibit was entered into by and between the Sea Food Company and L. O. Johnson,

and that said contract is a valid, legal binding obligation on the Sea Food Company, which the Sea Food Company will be unable to fulfill unless it is permitted to secure oysters from the State of Louisiana.

Affiant further states that she has attempted on behalf of her company to obtain permission from the officials of the State of Louisiana to remove oysters from Louisiana, having requested such permission in writing and offered to pay the taxes due on the schooners employed by her, the check constituting this offer and a copy of the letter refusing this permission being attached to this affidavit and marked Exhibits "A" and "B";

That unless affiant's company is able to fish oysters in [fol. 62] the State of Louisiana and remove same from the State of Louisiana, it will be unable to carry out the contract with said Johnson, and will suffer great damage thereby, which damage will exceed the sum of Three Thousand Dollars ($3,000.00), for the reason that the Sea Food Company will have idle for a large number of months schooners and equipment possessed by it and used by it in the operation of its business;

Affiant further says that the property used in and about the operation of its and the said L. O. Johnson plant largely exceeds the sum of Seventy Five Thousand Dollars ($75,000.00), and that the greater part of this value will be destroyed if the affiant's company and the said L. O. Johnson are prevented from packing and canning oysters in Mississippi, which it lawfully acquires in Louisiana;

Affiant further states that the Sea Food Company and its predecessors have operated at Biloxi, Mississippi, for a period of over fifty years, during which time it has assisted in building up a great canning industry at Biloxi, Mississippi; that a great deal of the wealth going into this canning industry has eminated from New Orleans, Louisiana, the reason for the New Orleans Investors selecting Biloxi as a canning point being that Biloxi has a wonderful supply of water fit for canning purposes, and also a healthful, pleasant climate which attracts the type of workers most needed in the canning business; that these reasons together with the further reason that Biloxi is on an open body of water only forty or fifty miles from the Louisiana oyster beds has made it more profitable for

owners of factories to operate in Biloxi than in New Orleans, or other Louisiana towns;

Affiant further says that the Louisiana communities lying near to the oyster beds can only be reached through bayous and canals largely owned by private individuals, and furthermore these communities other than New Orleans are not capable of supplying the needed labor in the quantity and in the seasons required by one canning oysters; that the reason for the absence of labor is a physical reason, that is, the lower reaches of Louisiana [fol. 63] being low and surrounded by marshes where mosquitoes and other insects breed in large numbers and their presence disturbs the upbuilding of large communities; that therefore while St. Bernard and Plaquemine Parishes contain almost inexhaustible oyster beds, it has never been found profitable to can oysters in these Parishes, only one or two canneries operating therein at this time;

Affiant further says that her company can buy oysters in Louisiana in the public market in sufficient quantities to satisfy the demands of the contract entered into between L. O. Johnson and her company, but that by reason of the Louisiana law she is unable to export these oysters, and should her company attempt to can the oysters in Louisiana it can only be done at a loss involving thousands of dollars;

Affiant further states on information and belief that the law now complained of is now being openly violated by shippers of raw oysters who are allowed to ship oysters in large quantities to numerous persons without removing the shell, the whole purpose of said law being to compel canners of oysters to locate their canning factories in Louisiana.

And further deponent sayeth not.

(Sgd.) Anna R. Heidenheim.

Sworn to and subscribed before me, this the 18th day of January, A. D. 1928. (Sgd.) Antonia Perisect, Notary Public.

[fol. 64] AFFIDAVIT OF LOUIS BRAUN, ON BEHALF OF PLAINTIFF—Filed January 26, 1928

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public in and for the City of Biloxi, Harrison County, Mississippi, Louis Braun, who being by me first duly sworn did depose and say:

That he is an adult resident citizen of Biloxi, Mississippi, thirty-seven years old and has resided in Biloxi all of his life; that he is engaged in the crushing of oyster shells into chicken feed, and also is very familiar with the oyster packing industry both in Mississippi as well as in Louisiana;

Affiant further says that at this time there *is* only two oyster canner*y*s located in the Parish of St. Bernard and Plaquemine in the State of Louisiana, on the East bank of the Mississippi River, and that these conner*y*s are located at the head of a private canal;

Affiant further says that unless a packer is fortunate enough to secure entrance to the oyster beds in Louisiana from the Mississippi River through some private canal, that he is precluded from packing oysters for the reason that no suitable water supply can be found near the oyster beds, and without a water supply oysters cannot be canned;

Affiant further says that in no point in Louisiana can oysters be canned with the same ease as in Biloxi, Mississippi, for the reason that Biloxi has a fine supply of water and a wonderful labor market, and for this reason Biloxi has developed a large oyster industry;

Affiant further says that Louisiana is not in present need of oyster shells for chicken grit as the State has nu-[fol. 65] merous reefs of dead oyster shells where millions of barrels of shells can be cheaply and profitably obtained;

Affiant further states on information and belief that oysters in large quantities can be bought on the public markets of Louisiana and that some of these oysters so bought are shipped in interstate commerce in the hull, this being what is known as the raw oyster business, and oysters are only being prevented from being shipped from Louisiana where the same are intended to be canned;

Affiant further says that the effect of the inforcement of the Louisiana oyster law will only be to compel the persons dwelling in Biloxi, Mississippi, to move to Louisiana where the oysters will be canned and shipped from the state in the same manner that they would be shipped were they canned in Biloxi; that no purpose of conservation of food to any one in Louisiana would be served by the inforcement of said law, for the reason that with the exception of the raw oyster business the sole purpose of catching and canning oysters is that the same may be shipped in interstate commerce to all of the states of the union;

Affiant further says that the supply of oysters in Louisiana is inexhaustible, and that the people of Louisiana do not need five percent of the oysters that can be produced in Louisiana, and that therefore oysters are a subject of Bar—and sale on the open market in Louisiana and the whole of the oyster shell after oysters are packed in cans are crushed into grit and is shipped from the State of Louisiana;

Affiant further says that the officials of the State of Louisiana are now patrolling the waters of that state and that any violation of the Louisiana law will result in the imprisonment of the violators and the confiscation of their equipment.

And further deponent sayeth not.

(Sgd.) Louis Braun.

Sworn to and subscribed before me, this the 18th day of January, A. D. 1928. (Sgd.) Eugene Peresicl, Notary Public.

[fol. 66] AFFIDAVIT OF R. H. CHINN, ON BEHALF OF PLAINTIFF—Filed Jan. 26, 1928

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, R. H. Chinn, who being by me first duly sworn did depose and say:

That he is an adult resident of Biloxi, Mississippi, and has lived in Biloxi, Mississippi, and been engaged in the oyster business for more than ten years past. That at the present time he is the manager of an oyster packing plant in Biloxi, Mississippi, and as such manager has supervision and control of its boats and is intimately acquainted with the oyster business as it is now conducted in Mississippi.

Affiant knows that this oyster business in the South has its origin in Biloxi and that for years past the main sum of this business was done in Biloxi, Mississippi, there being packed there countless thousands of barrels of oysters that were caught in Louisiana, these oysters being caught in Louisiana by the native fishermen, from Louisiana, as well as fishermen from Biloxi. The oysters after being caught in the waters of the State of Louisiana would be sold to boats operated by the large factories or would be by the boats catching the oysters directly brought to Biloxi and packed and canned in Biloxi.

Affiant further says that the reason for the canning of these oysters in Biloxi, Mississippi, was due to the fact of the plentiful supply of labor in Biloxi and the excellent water supply to be found there, a condition that cannot be found at any place in St. Bernard or Plaquemine Parishes in Louisiana where oysters are found or any point adjacent thereto. That aside from the fact Biloxi is situated only about forty or forty-five miles from the Louisiana oyster [fol. 67] grounds over an open expanse of water with the free right of travel vested in every one engaged in commercial pursuits, whereas in order to get to high ground in Louisiana from the marshes it is necessary either to go to one of the mouths of the Mississippi River or to pass into the Mississippi River by mean of a private canal.

Affiant further says that there are millions of barrels of oysters in Louisiana more than is necessary for actual consumption of the people of Louisiana, and that there are also millions of barrels of reel shells situated in the state that can be and are being used for manufacturing chicken feed; however, the vast proportion of all oysters caught in Louisiana, as well as all shells ground there, are shipped out of the state and the effect of the enforcement of the present Louisiana law would be not in conserving to the people of Louisiana a food supply but rather to compel the

manufacture in Louisiana of a food supply that will be shipped by the manufacturers in commerce to all parts of the world.

Affiant further says that if the company he represents, which is a Louisiana corporation, is compelled to can and pack all oysters caught by it in the State of Louisiana that it will only do so at a great loss and although these oysters can be and are being bought and sold on the open market in Louisiana in ordinary commerce, his company is being deprived of large profit in the packing of oysters by reason of the law which prohibits these oysters being canned at any point other than in the state of Louisiana.

Affiant further says that the oyster business has been an important element of commerce between the states of the South and that it has arrived at its present state after years of efforts on the part of those persons who are engaged in it at this time and one of the effects of the enforcement of the Louisiana law prohibiting the export of oysters will be to totally destroy and disintegrate the structure of this commercial industry that has been builded up after years of efforts and expenditures.

Affiant further says that at this time his company has boats lawfully empowered to catch oysters in the state of Louisiana which boats are catching oysters and selling same on the open market in Louisiana. That these oysters could be sold to the Sea Food Company or any other person [fol. 68] who has a contract to these oysters from the state of Louisiana, and the only reason why the Sea Food Company and the ohnson Fish & Oyster Company are prevented from fulfilling their contract with reference to the purchase and sale of certain amounts of oysters in Biloxi is that the officials of the State of Louisiana prevent the shipment from the state of the oysters that are now being lawfully bought and sold on the open market of the state of Louisiana, wholly treated on said market as an object of commerce.

Affiant further says, upon information and belief, that, with the knowledge and approval of the Conservation Commission of Louisiana, oysters in their natural state in the shells are being shipped from the state of Louisiana to numerous persons without the state, these oysters being used in that part of the oyster business known as the raw

oyster business which in itself is an object of considerable commerce between the states, and affiant is informed and believes that quantities of these oysters in the shells are shipped from the state of Louisiana to other states for use in restaurants, lunch stands and on railroad dining cars, and that no effort whatsoever is being made by the officials of the state of Louisiana to prevent shipment of these oysters, it being the sole intention and thought of said officials and the sole purpose of said law to prevent the shipment from the state of Louisiana to other states of oysters that are to be steamed and canned in factories so that all persons operating factories for the purpose of opening and canning oysters may be compelled to locate these factories in the state of Louisiana.

Affiant further says that they would be allowed to catch in Louisiana any quantity of oysters and to sell these oysters to any person whatsoever, there being no restriction on the amount of catch or the persons to whom they are sold provided the oysters are thereafter manufactured in the state of Louisiana and after they are manufactured affiant says that these oysters and all by-products of same can be wholly shipped from the state of Louisiana.

Affiant further states that the enforcement of this law will result in the dislocation of the business in Mississippi that involves more than million dollars of capital and the means of livelihood of more than five thousand people.

[fol. 69] Affiant further says that at this time there is not more than one or two factories operating in Louisiana in the parishes of St. Bernard and Plaquemine, and that although during the past fifteen years numerous factories have been established in these parishes no such factory has continued in existence up to this time under a successfull management, but that all persons heretofore engaged in that business in the portion of Louisiana mentioned have found the business unprofitable for the reason hereinabove set forth.

And further affiant sayeth not.

(Sgd.) R. Hart Chinn.

Sworn to and subscribed before me, this the 18th day of January A. D. 1928.

(Sgd.) Antonio Perisict, Notary Public.

[fol. 70] AFFIDAVIT OF L. O. JOHNSON JR., ON BEHALF OF PLAINTIFF—Filed January 26, 1928

[Title omitted.]

Personally appeared before me the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, L. O. Johnson, Jr., who being by me first duly sworn did depose and say:

That he is an aduly resident of Biloxi, Mississippi and is engaged in the buying and selling of oysters both in a raw and canned state in Biloxi under the firm styled of Johnson Fish & Oyster Co., that he is the same individual mentioned in the above bill of complaint as one of the complainants and is the same person who has heretofore entered into a contract with the Sea Food Company, a Louisiana Corporation, which contract is annexed to said bill of complaint as a- exhibit thereto; that said contract is a valid, binding legal engagement which he has undertaken and agreed to ca-ry out and which he will be able to carry out unless prevented by the enforcement of the laws of the State of Louisiana prohibiting the export of oysters from the State of Louisiana.

That if said law is so enforced as to prevent delivery to him of the oysters mentioned in said contract said affiant will be damaged greatly, which damage will be in excess of the amount of Three Thousand Dollars, and which damage will arise for the following reason.

Affiant being engaged in the packing of oysters at Biloxi, Mississippi; has a great amount of equipment such as, boats, tackle, packing houses, proiperty and money invested in said business, the amount of his investment and that of the Sea Feed Company totalling over $75,000.00, and he expects to realize from the sale of said oysters a profit largely in excess of the amount of three thousand dollars.

[fol. 71] Affiant further states that oyster Business in the South has largely been builded up in and about Biloxi due to the favorable location of Biloxi with reference to the oyster beds as well as the plentiful water supply in Biloxi, and the favorable location of same with reference to the health of the inhabitants thereof; that by reason of the

excellent water supply and the large number of people who have gathered in Biloxi and who have become schooled in the packing of oysters oysters can be canned and packed in Biloxi to a greater advantage than at any other point in the South, and for the past fifty years the vast majority of oysters caught in Louisiana by native fishermen, as well as fisherment from the Biloxi have been packed in Biloxi, although a great many of the owners of factories are either from Louisiana or receive their capital from this state.

Affiant further states that this business has been continuous and uninterrupted and has resulted in an investment of hundreds of thousands of dollars at Biloxi and in the residence of four or five thousand people who depend solely upon this business and the shrimp business as a means of livelyhood.

Affiant further says that although numerous persons have attempted to can oysters in Louisiana, due to an almost inexhaustable supply of oysters, they have failed in this endeavor due to the fact that they are unable to succeed in securing a suitable location for their factories and locations where they are able to get fresh water as well as a supply of needed labor in opening and canning oysters that naturally has been impeded in the building of large communities in St. Bernard and Plaquemine Parishes on account of the low lying land and which results in the breeding of various insects detrimental to human existence, and has also impeded the operation of factories there by reason of the inability to get the proper supply of pure water; the only water that can be obtained being on the banks of the Mississippi River and these banks can only be reached by means of private canals, the number of which are limited, but unless a factory owner possess one he is unable to get his products from the oyster beds to his packing plant. That for this reason oysters have not been looked upon in Louisiana as a food supply needed for its local citizens, [fol. 72] but rather as an object of commerce to be bought and sold in the open ma-ket with its destination beyond the outside world, both in the raw and canned state.

For this reason the vast majority of oysters caught in Louisiana have always been bought by factory men in Biloxi and transported to Biloxi where they were canned and shipped to all points of the United States. That this

business is constantly increasing and oysters are valuable to the people of Louisiana not as a local food supply but as an object of commerce that brings great quantities of money into the state, but although the state has constantly assisted in the upbuilding of factories in this state it has been unsuccessful due to the fact that local conditions were against the successful operation of canning factories.

Affiant being in the oyster business is also familiar with the oyster business both in Biloxi as well as Louisiana, and knows that the present existing law is inforced only against persons bring- oysters from Louisiana to Mississippi for the purpose of canning, but it is not inforced against persons shipping oysters from the state of Louisiana to the outside world in their natural state for the purpose of being opened and served as raw oysters in restaurants, railroad trains and oyster counters, etc.; that a very large and profitable business of this nature exists in Louisiana and affiant is informed and believes that there is now going on to a large extent, shipments being made continuous outside the borders of Louisiana, and this with the knowledge and approval of the Conservation Commission of Louisiana.

Affiant further states that under the present existing oyster law raw oysters cannot be shipped from Louisians and canned in an outside state. The same result is obtained by the canning of oysters in Louisiana and the shipment of the canned oysters from the State and the crushing of the shells in Louisiana and the shipment of the crushed shells from the State. That no purpose of conservation of food or of shells is served by said law, but its only purpose is to prevent the shipment of the oysters from the state to be canned outside of the state, thereby forcing [fol. 73] persons owing canning factories to locate in Louisiana at a great disadvantage to them and of great losses in money and profit to these canners.

Affiant further states that the Sea Food Company will be able to purchase oysters in an unlimited quantity from persons having legal right to catch them in Louisiana, but that at the present time the waters of the State of Louisiana, being patrolled by representatives or officials of the Louisiana Conservation Commission who threaten to arrest and imprison officers, officials or employees of the Sea

Food Company and to confiscate their boats if any violation of the law is attempted by the removal of oysters lawfully purchased and acquired in Louisiana.

Affiant further states that oysters sold in Biloxi are not only caught in Louisiana by citizens of Louisiana, but are caught by citizens of Louisiana who in turn sell their catches to boats from Mississippi without any discussion and in unlimited quantities, but that these oysters when bought are being prevented from removal from the state of Louisiana to the State of Mississippi.

And further affiant sayeth not.

(Sgd.) L. O. Johnson, Jr.

Sworn to and subscribed before me, this 18th day of January, A. D. 1928. (Sgd.) Antonio Peresict, Notary Public.

[fol. 74] AFFIDAVIT OF THEODORE GRILLIS, FILED ON BEHALF OF PLAINTIFFS, JANUARY 26, 1928 (EXHIBITS ATTACHED TO THIS AFFIDAVIT TRANSMITTED IN THE ORIGINAL BY ORDER OF COURT)

STATE OF MISSISSIPPI,
Hinds County:

Personally came before me, the undersigned officer in and for the aforesaid state and county, the within named Theodore Grillis, who, by me being duly sworn, makes oath that he is the proprietor of the Grillis Grill, situated in West Capitol Street, Jackson, Mississippi, wherein he operates a restaurant and solicits the patronage of the public; that he has for probably more than eighteen months served in his restaurant oysters on the half shell, which he receives in barrels in the whole shell from dealers and packers in New Orleans in the State of Louisiana.

Affiant states that there is hereto attached a photograph of his restaurant taken from the exterior, showing oysters on the half shell on the inside of the show window kept on ice; that said oysters are what is known as Louisiana Bayou Cook Oysters, a very choice variety of Louisiana oysters, which are grown and shipped to affiant in Jackson, Missis-

sippi, by American Railway Express from New Orleans in the State of Louisiana; that just inside of said show window is a sign, conspicuously posted, upon which is written the following language: "Louisiana Bayou Cook Oysters on the Half Shell." That affiant is now and has been continuously solicited by New Orleans packers and dealers by price lists, wherein they have sought to sell him oysters in the shell to be shipped from New Orleans in the State of Louisiana, and that this course of business existed prior to January 1, 1928, and has continued without interruption since such date; that he has continuously, since the first of January, 1928, in the due course of business, procured from packers and dealers in New Orleans, Louisiana, shipped to him by express, oysters in the shell, which he has in due course of business sold to his customers in his restaurant, the photograph of which is hereto attached and marked Exhibit 1, the same being asked to be considered as if set out herein in full in words and figures.

Affiant states that he gets several barrels of oysters in the shell per week, shipped to him by dealers in New Orleans, Louisiana, to Jackson, Hinds County, Mississippi; that the oysters which he gets are merely measured by his requirements; that he could buy from such source oysters in the [fol. 75] shell by the car load per day, without restriction or limitation. Affiant states that upon the morning of January 23rd, 1928, in due course of business, he received from Paul Ziblich Company, Inc., of New Orleans, Louisiana, one barrel of raw oysters; that said oysters came to him by express; that upon the morning of January 24th, 1928, he received from the said Louisiana corporation two barrels of raw oysters in shells in interstate commerce by the American Railray Express Company; that the original invoice is hereto attached and marked Exhibit 2, the same being asked to be considered as if set forth herein in full in words and figures; that the American Railway Express receipt therefor, with charges thereof, is hereto attached and marked Exhibit 3, the same being asked to be considered as if set forth herein in full in words and figures.

Affiant states that he believes he could have gotten a car load or raw oysters in shells contained in barrels or sacks as readily and easily as the foregoing purchases were made. Affiant states that the oysters received by him on the morn-

ing of January 24th, 1928, as were other oysters, were shipped in barrels containing a top set down within the barrel; that the top is made of wood, and on the top of the barrel there was contained, and on top of all the barrels shipped to him, there is usually contained, the following indorsement: "The Original Bayou Creek Oysters, packed by Paul Ziblich Company, Inc., New Orleans, La., State Board of Health Permit No. 36."

Affiant states that he will endeavor to have made a photographic copy of the top of said barrel with the indorsement hereinbefore set out, and if he can do so, the same will be made Exhibit 4 to this affidavit, and the same is asked to be considered as if set out herein in full in words and figures, affiant attaches exhibits and letter dated Jan. 9th, 1928 from said Zibilich Co. Inc.

(Signed) Theo. Grillis.

Sworn to and subscribed before me, this 24th day of January, 1928. (Sgd.) M. J. Conerly, Notary Public. (Seal.)

[fol. 76] AFFIDAVIT OF DOMINECK CARAVELLA, ON BEHALF OF PLAINTIFFS—Filed January 26, 1928

STATE OF MISSISSIPPI,
County of Warren:

Personally came and appeared before me, the undersigned, a Notary Public, in and for Warren County, Mississippi, the undersigned, Domineck Caravella, manager and proprietor of the New Orleans Oyster House, in the City of Vicksburg, Mississippi, who, having been duly and legally sworn, makes the following statement, to-wit:

That he is now, and has been manager and proprietor of the New Orleans Oyster House, in said county and state, since, and long prior to, the 1st day of January, 1928; that, in connection with his business, the operation and running of the New Orleans Oyster House, he serves over the counter oysters on the half shall, and has done so continuously since the 1st day of January, 1928.

That oysters in the shell are usually obtained by him from the city of New Orleans, Louisiana, or other places in the

state of Louisiana, and they are shipped to him either by freight or express, in barrels or sacks, from individuals, firms or corporations engaged in business in the state of Louisiana, and that they have been continuously so shipped to him from said state of Louisiana, since the 1st day of January, 1928.

Affiant further states that the supply of oysters in the shell shipped to him or to the New Orleans Oyster House, of which he is the manager and proprietor, has been obtained from the source aforesaid, since the 1st day of January, 1928, up to the day of the execution of this affidavit, without interruption, and that he is able and has been able, since said date to obtain oysters in the shell, in any quantity from the state of Louisiana.

[fol. 77] Affiant further states that, since the 1st day of January, 1928, he has had no trouble whatsoever in obtaining oysters in the shell in small or large quantities, from the state of Louisiana, and that the last shipment was received on the 23rd day of January, 1928.

(Sgd.) D. M. Caravella, Manager & Proprietor of the New Orleans Oyster House, Vicksburg, Mississippi.

Sworn to and subscribed before me this 24th day of January, 1928. (Sgd.) Jos. J. Gerache, Jr., Notary Public. My commission expires on the 30th day of December, 1931. (Seal.)

[fol. 78] AFFIDAVIT OF B. C. YOUNG ON BEHALF OF PLAINTIFF—Filed January 26, 1928

STATE OF MISSISSIPPI,
County of Warren:

Personally came and appeared before me, the undersigned, a Notary Public, in and for Warren County, Mississippi, the undersigned, B. C. Young, manager of the Carroll Hotel, in the City of Vicksburg, Warren County, Mississippi, who, after having been duly and legally sworn, makes the following statement, to-wit:

That he is now and has been manager of the Carroll Hotel, in the City of Vicksburg, Warren County, Missis-

sippi, since, and long prior to, the 1st day of January, 1928; that, in connection with said hotel, a restaurant and dining room has, since the 1st day of January, 1928, been run and operated under the general supervision of affiant.

That fresh, raw oysters in the half-shell are habitually used and served to customers in the restaurant, connected with the hotel, and have been so used and served continuously since the 1st day of January, 1928.

That said oysters are usually obtained from the city of New Orleans,, Louisiana, or from other places in the state of Louisiana, and that they are shipped to said hotel either by freight or express in barrels or sacks from individuals, firms or corporations in business in the state of Louisiana.

That the supply of oysters in the shell so shipped to said hotel has been obtained from the source aforesaid since the first day of January, 1928, up to the date of the execution of this affidavit, without interruption and that the hotel is able to get the oysters in the shell in any quantity at any time desired; that they are shipped in the barrel or by the car load, as the exigencies of the business require. [fol. 79] Affiant further states that, since the 1st day of January, 1928, he has had no trouble whatsoever in obtaining oysters in the shell in small or large quantities and that the last shipment was received on the 22nd day of January, 1928.

(Sgd.) B. C. Young, Manager Carroll Hotel, Vicksburg, Mississippi.

Sworn to and subscribed before me, on this the 24th day of January, 1928. (Sgd.) Mrs. Netlydell W. Stevens, Notary Public. My commission expires on the 21st day of April, 1931.

[fol. 80] Affidavit of Pete Messina Filed on Behalf of Plaintiff—Filed January 26, 1928

State of Mississippi,
County of Warren:

Personally came and appeared before me, the undersigned, a Notary Public, in and for Warren County, Mississippi, Pete Messina, manager and proprietor of Mes-

sina's Restaurant, in said county and state, who, having been duly and legally sworn, makes the following statement, to-wit:

That he is now and has been since the first day of January, 1928, manager and proprietor of Messina's Restaurant, in said county and state and the city of Vicksburg, thereof; that, in connection with his business, the operation and running of the Messina's Restaurant, he serves over the counter oysters on the half shell, and has done so continuously since the 1st day of January, 1928.

That — in the shell shell are usually obtained by him from the city of New Orleans, Louisiana, or other places in the state of Louisiana, and they are shipped to him either by freight or express, in barrels or sacks, from individuals, firms or corporations engaged in business in the state of Louisiana, and that they have been continuously so shipped, to him from said state of Louisiana, since the 1st day of January, 1928.

Affiant further states that the supply of oysters in the shell shipped to him or to Messina's Restaurant, of which he is the manager and proprietor, has been obtained from the source aforesaid, since the 1st day of January, 1928, up to the day of the execution of this affidavit, without interruption, and that he is able and has been able, since said date to obtain oysters in the shell, in any quantity from the state of Louisiana.

Affiant further states that, since the 1st day of January, 1928, he has had no trouble whatsoever in obtaining oysters in the shell in small or large quantities and that the [fol. 81] last shipment was received on the 24th day of January, 1928.

(Sgd.) Peter P. Messina, Manager and Proprietor of Messina's Restaurant, Vicksburg, Mississippi.

Sworn to and subscribed before me, on this the 24th day of January, 1928. (Sgd.) Jos. J. Gerache, Jr., Notary Public. (Seal.) My commission expires on the 30th day of December, 1931.

[fol. 82] AFFIDAVIT OF CHARLIE CHAGARE ON BEHALF OF PLAINTIFF—Filed January 26, 1928

Affidavit

STATE OF MISSISSIPPI,
County of Lauderdale:

Personally appeared before me, the undersigned authority in and for the jurisdiction aforesaid, Charlie Chagare, who, by me being first duly sworn, on his oath makes affidavit and says: That he is one of the proprietors of the Meridian Sandwich House and Cafe, a restaurant in the City of Meridian, Lauderdale County, Mississippi; that fresh, raw oysters on the half-shell are habitually used and served to customers in said restaurant; that these oysters are usually obtained by said restaurant in the shell in barrels by express from S. M. Fucich & Son, oyster dealers, doing business at 532-534-536 Dumaine Street, in the City of New Orleans, Louisiana, and are shipped to said restaurant direct from the City of New Orleans, Louisiana; that these raw oysters in the shell have been obtained from such source since the first day of January, 1928, up to date, without interruption; that these raw oysters in the shell, to be served on the half-shell, can be obtained from such source in any quantity and at any time desired, that is, in such number of barrels as the exigencies of business require.

(Signed) Charlie Chagare.

Sworn to and subscribed before me, this 24th day of January, 1928. (Signed) Chas. A. McIntosh, Notary Public. (Seal.) My commission expires August 13, 1930.

[fol. 83] AFFIDAVIT OF K. JOSEPH ON BEHALF OF PLAINTIFF—Filed January 26, 1928

STATE OF MISSISSIPPI,
County of Forrest,
City of Hattiesburg:

Personally appeared before me, the undersigned authority in and for the state, county and city aforesaid K.

Joseph, who by me being first duly sworn states on oath that he is the manager of the Blue Bird Cafe in the said City of Hattiesburg and that he has been engaged in the cafe business for many years. Affiant states that fresh raw oysters on the half shell or shell oysters, are habitually used and served to customers in his Cafe and that since the first of January, 1928, he has continuously offered sayd oysters for sale to the public.

Affiant further states that he obtains these oysters from S. M. Fricich & Son, located in the City of New Orleans, Louisiana, and that he has always gotten his oysters out of New Orleans, Louisiana. Affiant states that these oysters are shipped to him by express on short notice, two sacks at a time. Affiant states that prior to and since the first day of January, 1928, he has had no trouble with getting oysters out of New Orleans and that he could buy the oysters in any quantity that the exigencies of his business required.

Witness my signature this the 23rd day of January, 1928.

his
(Signed) K. Joseph, X Manager.
mark

Sworn to and subscribed to before me this the 23rd day of January, 1928. (Signed) T. L. Hays, Notary Public. (Seal.)

[fol. 84] AFFIDAVIT OF E. J. MISTICOS, ON BEHALF OF PLAINTIFF—Filed Jan. 26, 1928, and Exhibits Attached

(The Exhibits attached to this affidavit transmitted in the original by order of Court.)

STATE OF MISSISSIPPI,
Hinds County:

Personally came before me, the undersigned officer in and for the aforesaid state and county, the within named E. J. Misticos, who, by me being duly sworn, makes oath that he is one of the managers of the Belmont Cafe, situated on

East Capitol Street in Jackson, Mississippi. Affiant states that the Belmont Cafe is a restaurant where the public is invited to obtain good and wholesome food; that ordinarily it does not serve oysters on the half shell, though it serves raw oysters; that oysters in the half shell are served and offered for sale in the City of Jackson at the Grillis Grill, where a special feature of oysters on the half shell is made, and at the Edwards Hotel in Jackson, Mississippi, the principal hotel in Mississippi. Affiant states, however, that if it desired to handle Louisiana oysters in the half shell, it would have no trouble, since the first day of January, 1928, or prior thereto, in obtaining them from the various dealers in the City of New Orleans in the State of Louisiana; that the various dealers in sea foods in the City of New Orleans constantly send out price lists to the Belmont Cafe, soliciting its orders for sea foods to be shipped from New Orleans in the State of Louisiana to Jackson, Mississippi, including raw oysters in the shell; that the Belmont Cafe could purchase a car load a day if it had any desire for them or was able to pay for them.

Affiant states that the New Orleans Fish & Oyster Depot in New Orleans, Louisiana, has a regular agent in the City of Jackson, Mississippi, who calls on the trade, and regularly calls on the Belmont Cafe, soliciting its orders for sea food, including raw oysters in the shell. That upon the 16th day of January, 1928, affiant received from the New Orleans Fish & Oyster Depot a letter soliciting its business, a copy of which letter is hereto attached and marked Exhibit 1, the same being asked to be considered as if set out herein in full in words and figures.

Affiant states that on the 20th day of January, 1928, by telegram, it ordered from Paul Bougon Fish & Oyster [fol. 85] Company, a Louisiana corporation, domiciled in New Orleans in the State of Louisiana, one barrel of oysters in the shell for shipment January 23rd, 1928. Affiant states that promptly on the morning of January 24th, 1928, the American Railway Express Company delivered to the Belmont Cafe from the said Louisiana corporation one barrel of raw oysters in the shell, which had been transported from the City of New Orleans in the State of Louisiana to Jackson, Mississippi, in interstate commerce; that the invoice for said oysters is hereto attached and marked Ex-

hibit 2, the same being asked to be considered as if set out herein in full in words and figures. That said raw oysters in the shell were obtained in a barrel, and that upon the barrel were two tags, showing the consignor and consignee, one of which tags is hereto attached and marked Exhibit 3, and the other of said tags is hereto attached and marked Exhibit 4; all of said exhibits hereto attached being asked to be considered as if set out herein in full in words and figures. That the duplicate express receipt from the American Railway Express Company is hereto attached and marked Exhibit 5, and is asked to be considered as if set out herein in full in words and figures.

(Signed) E. J. Misticos.

Sworn to and subscribed before me, this 24th day of January, 1928. (Signed) Louise Melton, Notary Public. (Seal.)

[fol. 86] AFFIDAVIT OF D. J. GOODIN, ON BEHALF OF PLAINTIFF—Filed Jan. 26, 1928

(Exhibits transmitted in original as per order of Court.)

L. O. JOHNSON, SR., AND SEA FOOD COMPANY

vs.

LOUIS A. MARKS ET AL.

In Equity

STATE OF MISSISSIPPI,
Hinds County:

Personally came before the undersigned officer in and for the aforesaid state and county, the within named D. J. Goodin, who by me being duly sworn, makes oath that he is a Special Agent and Detective; that he was employed on or about the 10th day of January, 1928, by counsel for complainants in the above-entitled cause, to go to New Orleans in the State of Louisiana and observe and investigate the conduct of the busines of the shipment of raw oysters in shells from the state of Louisiana into other states; that

he reached New Orleans upon January 12th, 1928; that he went to the station of the Illinois Central Railroad Company, from which station there go out from the state of Louisiana unto other states, four separate railroads, to wit, the Yazoo and Mississippi Valley Railroad; the Illinois Central Railroad; the Texas Pacific Railroad and the Southern Pacific Railroad; that he visited said station and saw and observed thay oysters in shells were being shipped from the said station in barrels by express to various and sundry places in the states of Mississippi and Texas, and that said oysters were also being shipped in shells beyond the jurisdiction of the state of Louisiana in sacks.

Affiant states that he observed raw oysters in barrels being shipped to the New Orleans Oyster House at Vicksburg, Mississippi, and various and sundry other shipments to points in Mississippi and the state of Texas.

Affiant states that there are a number of large fish and oyster houses in the city of New Orleans engaged in the shipping of fish, shrimp and oysters from the city of New Orleans in the state of Louisiana. That they appear to be doing a very large business, and are shipping from the state of Louisiana into other states, including Mississippi, raw oysters in barrels and sacks; that there is no restriction whatsoever of any kind upon these shipments; that the [fol. 87] dealers will ship from the city of New Orleans to the state of Mississippi, or any other state in the Union, raw oysters in barrels and/or sacks, by freight or express, in unlimited quantities, and that said dealers have continuously since the first day of January, 1928, been engaged in shipping raw oysters in the shell out of the state of Louisiana into other states. That raw oysters in shells are served on the hanf-shell in restaurants in the larger towns in the state of Mississippi, and the supply comes, almost exclusively, from the city of New Orleans.

That affiant bought in the city of New Orleans from the New Orleans Fish and Pyster Depot for shipment in interstate commerce to E. M. Hathorn, Hattiesburg, Mississippi, one sack of raw oysters in shells, which were shipped from the city of New Orleans; that affiant attaches hereto a paid invoice from the said New Orleans Fish and Oyster Depot for said sack of raw oysters in shells, which invoice is hereto attached and marked exhibit "A" hereto, the same

being asked to be considered as if set out in full herein in words and figures. That affiant attaches hereto as exhibit "B" the express receipt from New Orleans, La. to the City of Hattiesburg in the state of Mississippi, covering said shipment of raw oysters in shells; that affiant attaches hereto as exhibit "C" the receipt for said oysters aforesaid from the consignee at Hattiesburg, Mississippi. The said exhibits are asked to be made part of this affidavit and are referred to as if set out herein in full in words and figures.

Affiant purchased from F. M. Fucich & Son, New Orleans, La., one sack of raw oysters in shells, and directed the same to be shipped to himself at Vicksburg in the state of Mississippi. A copy of said invoice is hereto attached and marked exhibit "one" hereto, same being asked to be considered as if set out herein in full in words and figures. That affiant attaches hereto as exhibit "two" the express receipt therefor, the said invoice and express receipt each being dated Jan. 17, 1928; that the said express receipt is made exhibit "two" and is asked to be considered and made part of this affidavit as if set out in full in words and figures.

[fol. 88] That affiant, on the 14th day of January, 1928, purchased from Paul Zibilich Company one sack of raw oysters in the shell to be shipped to J. M. Williams at Jackson, Mississippi; that the said Paul Zibilich Company, a Louisiana corporation, shipped to the said J. M. Williams at Jackson, Miss., at the request of affiant, upon the 14th of January, 1928, one sack of raw oysters in shells; that the invoice therefor is hereto attached and marked exhibit "three," the same being asked to be considered as if set out in full in words and figures.

Affiant states that he made these purchases and shipments for the purpose of ascertaining as to whether or not there were any kind of restrictions against the shipment of raw oysters in shells from the state of Louisiana to any other points in the United States. Affiant states that the sales were made to him as aforesaid for shipment into the state of Mississippi, and that shipments were made into the state of Mississippi by the seller thereof, without any question or hesitancy, and that said shipments were accepted by the express company without any kind of question. Affiant states from what he saw and observed and learned

on inquiry from the dealers and the trade in general, that absolutely no restriction has existed since the first of January, 1928, in respect to the transportation and shipment of raw oysters in shells from the state of Louisiana to the state of Mississippi or any other state of the Union. Affiant states that he could have bought from any dealer in fish and oysters in the city of New Orleans for shipment by freight or express to Mississippi or any other state in the Union, raw oysters in shells in unlimited quantities, and could have procured the same to be shipped and transported either by the express company or by any railroad company operating from the city of New Orleans. That no instructions have been given to the express company or carriers not to accept or receive such freight for shipment, and that there is no machinery organized, in force or in operation in the city of New Orleans, nor has there been any since the first of January, 1928, regulating, controlling or preventing the shipment of raw oysters in shells from the city of New Orleans to other states in the Union. [fol. 89] Affiant spent ten days in the city of New Orleans, visiting the places of business of the various fish and oyster merchants; that he was permitted in some instances to inspect their invoices; that he talked to the managers of said companies and was told by them that they would sell and ship without restriction in interstate commerce raw oysters in the shell to any person who wanted to buy and was able to pay for the same for shipment to any point in the Union. That the New Orleans Fish and Oyster Depot showed him their invoice of shipment to the Edwards House, Jackson, Mississippi, under date of January 11, 1928, one barrel of raw oysters in shells, and also a barrel of approximately the same date of raw oysters in shells to the Belmont Cafe, in Jackson, Mississippi. Affiant states that he is familiar with conditions existing in Jackson, Mississippi; that various and sundry restaurants and hotels serve to their customers oysters on the half shell; that these oysters on the half shell are being shipped to Jackson, Mississippi, from the city of New Orleans, in the state of Louisiana, and that he knows that a dealer in Jackson, Mississippi, can buy from the city of New Orleans in the state of Louisiana, in unlimited quantities raw oysters in the shell. That one, especially, in Jackson, Mississippi, the Grillis Grill, exhibits in its show window approximately a barrel of raw

oysters, together with a sign, which proclaims that the restaurant offers to the public Louisiana oysters on the half shell; that the only limit to the purchase of said oysters for shipment and transportation from the state of Louisiana to other states in the Union is the demand of the public therefor.

Affiant states that he made a thorough study of conditions in the city of New Orleans during the period he remained there; that he found no officer of the state of Louisiana making any inspection to see if the law was being violated, or making any effort to enforce the provisions of the oyster law. Affiant states from what he saw and heard that no effort is being made or will be made to enforce the oyster law as against shipments of raw oysters in the shells from the city of New Orleans in the state of Louisiana to other states in the Union. That, upon the other hand the business [fol. 90] has grown and improved, is largely sought after and aggressively pushed.

Affiant states that upon the 20th day of January, 1928, at 12:30 p. m. he left the city of New Orleans, for the city of Jackson, Mississippi, on what is known as the Panama Limited; that he went into the dining car about the time the Mississippi line was reached; that he rode from the state of Louisiana to the state of Mississippi in the dining car; that he ordered raw oysters on the half shell, which had been brought from the city of New Orleans on the dining car, and the same were served to him, for which he paid a charge of fifty cents for one-half dozen; that a large number of persons travel on the said train, which goes from the city of New Orleans to the city of Chicago, and that there were a large number of persons in said dining car, and a number of persons were served raw oysters on the half shell, and any person who desired to purchase the same and was able to pay for them could obtain them, the only limit thereto being the requirement of the trade. That all of said raw oysters in shells were brought out from the city of New Orleans in the state of Louisiana, on the dining car of the Panama Limited and the Illinois Central fast passenger train, and that all of said oysters were purchased in the city of New Orleans and were what is known as Louisiana Bayou Cook oysters.

[fol. 91] Affiant further states that upon the 22nd day of January, 1928, he left Jackson, Mississippi, on the northbound fast Illinois Central Railroad train number four about one-twenty p. m. This is a train which the Illinois Central Railroad operates from New Orleans in the state of Louisiana, to Chicago, in the state of Illinois and Saint Louis in the state of Missouri. That affiant went into the dining car situated upon said train, which had been brought on said train from New Orleans in the state of Louisiana, and asked as to whether or not he could be served with Louisiana oysters. He was informed by the manager in charge of said dining car that Louisiana oysters on half shell were regularly served on that train; that he was handed a menu card, the original of which is hereto attached and marked exhibit "one A," from an inspection of which it will appear that oysters on the half shell are listed among the food served on said train; that affiant took his luncheon on said train and bought, with other food, half a dozen oysters on the half shell. That said menu card is asked to be considered as if set out in full in words and figures. That he was informed that said oysters were brought out of the city of New Orleans on said train for serving any person or passenger on said train who desired the same. Affiant states that he is familiar with Louisiana oysters; that they have a quality peculiar to themselves, and that the oysters served to him on the half shell were Louisiana oysters; that they were the same kind and quality of oysters which he ate in New Orleans, and he recognized them as such. Affiant states that the only limit to the amount of oysters which could be purchased was the capacity and desire of the passengers being served on the dining car of said commodity not only served to affiant but other passengers on said dining car; that they are brought out of Louisiana for this purpose alone.

Affiant states that he got off at Memphis, Tennessee, on the night of January 22nd, aforesaid; that on Monday morning, January 23rd, he went to the office of the American Railway Express Company in Memphis, Tennessee, and [fol. 92] inquired if they were handling oysters in shells from New Orleans into Memphis. The agent and servant of the American Railway Express Company in charge of the office, informed him that the American Railway Express

Co. habitually transported oysters in the shell in barrels from the city of New Orleans to the city of Memphis in the state of Tennessee. Affiant asked if he might be permitted to examine the books of the American Railway Express Company in order to ascertain the number of shipments and the consignees thereof. Affiant was informed that without process of court he would not be permitted to see or examine these books or obtain any information therefrom but that under proper court order the books and records were available for any legitimate purpose.

Affiant states that he made inquiry on the streets in Memphis as to where he could purchase oysters on the half shell, and he was directed, among other places, to the Madison Sea Food, a restaurant situated on Madison Street in Memphis in the state of Tennessee. Affiant went there and he asked the Manager as to whether or not he could obtain Louisiana oysters on the half shell, and he was informed that this restaurant made a specialty of Louisiana sea food, and among the sea foods, oysters on the half shell. Affiant states that on Madison Street, in front of said restaurant, there is large show window for advertising purposes, which contained various kinds of fish, which are served as food in the restaurant, and a large quantity of oysters in the shell with hunks of ice among it; that said show case has as its foundation one made of Louisiana oyster shells. Affiant states that this particular restaurant features the Louisiana oysters on the half shell and uses this method of advertising in order to induce the public to come and purchase sea foods of all kinds, including Louisiana oysters on the half shell. Affiant caused to be taken (which he knows to be accurate) from the front a picture of said show window showing the show case, oysters in the shell on the inside, and the foundation on which said show case rests built of oysters shells, all of which affiant is informed was of Louisiana oysters. Affiant makes said [fol. 93] picture exhibit "one B" to this affidavit and asks that the same be considered as if set down in full in words and figures. Affiant asked the manager in charge of said restaurant where he obtained oysters from, including oysters in the shell. He stated that they came from New Orleans, Louisiana, from the firm of Paul Zibilich & Co. in the city of New Orleans. He said that New Orleans was

the most direct route for Memphis to obtain sea food and oysters; that they had to be brought as promptly as possible, and that New Orleans was the source of supply for Memphis. The manager stated that he was making a specialty feature of Louisiana oysters on the half shell and using this as an advertising medium. The restaurant was crowded with people and the management sold large quantities of Louisiana oysters on the half shell. Affiant attaches hereto as exhibit "one C" a photograph taken in his presence, (which he knows to be correct) of the interior of said restaurant showing two waitresses in the act of serving oysters on the half shell, the manager standing behind the counter. Affiant asked the manager how many barrels of Louisiana oysters in the shell he purchased for his restaurant per week, and he stated from 7 to 10 barrels per week, all of which were purchased from New Orleans in the state of Louisiana, from the above-named firm, and stated that he could buy them at any time, day or night, without limit.

Affiant asked the proprietor of the restaurant for an affidavit of these facts, but he promptly declined to make the affidavit. Affiant had no way of requiring or compelling him to do so, but the facts may be proved from said witness upon interrogatories addressed under court order or by taking testimony in the manner directed in a court.

Affiant did not take the picture of any other restaurant or obtain oysters on the half shell from any other restaurant in Memphis, but he is advised that in other restaurants and in prominent hotels Louisiana oysters are purchased and transported to Memphis, Tennessee in interstate commerce, and are offered to guests and customers on the half shell.

[fol. 94] Affiant states that in the Madison Street restaurant to which he has just referred and which is represented in the photographs aforesaid, he was shown one of the barrels in which raw oysters in the shell are transported from New Orleans to Memphis, Tennessee; that the barrel is either a sugar or flour barrel, or about the size thereof, with a specially prepared top, which fits down inside the barrel, and that that particular barrel had on it and tightly fastened to the top of the barrel so that the same could not be removed, and at the side thereof also, the name of

the consignor, "Paul Zibilich & Co., New Orleans, Louisiana."

(Signed) D. J. Goodin.

Sworn to and subscribed before me this the 24th day of January, 1928. (Signed) Louise Melton, Notary Public. (Seal.)

[fol. 95] AFFIDAVIT OF W. H. LUCAS—FOR PLAINTIFF—Filed January 26, 1928

(Exhibits Attached to this Affidavit Transmitted in the Original by Order of Court)

STATE OF MISSISSIPPI,
County of Jones:

Personally appeared to me the under-signed authority in and for the State and County aforesaid, W. H. Lucas, who by me first duly sworn, states on path that he is a resident of the City of Laurel, Jones County, Mississippi, and that he is the proprietor of the Lucas Cafe, in said City; that he has been in the Cafe business in the City of Laurel for more than fifteen years.

Affiant states that while there is not much demand in the City of Laurel for fresh raw Oysters on the half shell, that, never-less, he occasionally uses same and has served same to customers in his restaurant. He states further that these Oysters are obtained from Zibilich's in the City of New Orleans, State of Louisiana; that they can be obtained either by freight or express in barrels or sacks in any quantity he desires. Affiant further states that he has received Oysters in the raw state on the half shell from the aforesaid firm since the first of January 1928, and has had no trouble in obtaining same. As a matter of fact, affiant states that Oysters are received by him from New Orleans twenty-four hours after ordering them.

Attached thereto and made a part of this affidavit is a price list sent to *be* by Zibilick's from New Orleans, and I, also, attach hereto the shipping tag that was received with my last order of raw Oysters, or Oysters in the shell,

from New Orleans. I, also, make this tag a part of my affidavit.

Witness, this the 24th day of January, 1928.

(Signed) W. H. Lucas.

Sworn to and subscribed before me, this the 24th. day of January, 1928. (Signed) Alma Grayson, Notary Public. (Seal.)

[fol. 96] AFFIDAVIT OF B. O. GUNN, ON BEHALF OF PLAINTIFF—Filed January 26, 1928

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, B. O. Gunn, who being by me first duly sworn did depose and say:

That he is an adult citizen of Biloxi, Mississippi, has resided in said city for over twenty years, during a large part of which said time he has been in the employ of the Sea Food Company and at the present time is acting manager of said Sea Food Company;

That at the present time affiant knows that as much as seventy-five per cent of the capital stock of the Sea Food Company, a Louisiana corporation, is owned by citizens of Louisiana, to-wit: H. E. Gumbel of New Orleans;

That the Sea Food Company upon making the contract set out in the bill of complaint with L. O. Johnson, Jr., sought permission from the state of Louisiana to carry out said contract by moving oysters from Louisiana to Mississippi, but that this permission was absolutely refused and the Sea Food Company was notified that the terms of the laws of Louisiana preventing the export of oysters from said state would be enforced against the Sea Food Company;

Affiant further says that the Sea Food Company can carry out said contract not only by means of boats employed by it but that oysters can be bought by it in Louisiana from citizens of Louisiana engaging in the catching of oysters, but that on account of said law these oysters

cannot be lawfully moved from the State of Louisiana to the State of Mississippi, so that the Sea Food Company can can same in the State of Mississippi;

Affiant further says that it would work an irreparable harm and injury to the Sea Food Company to have to move its canning plant to the State of Louisiana for the purpose [fol. 97] of canning these oysters, first, because it would take months to move said plant, and secondly, because at this time affiant knows of no location in Louisiana where said plant could be profitably and economically operated;

That in order to profitably and economically operate a plant for the canning of oysters in Louisiana it would be necessary first, that said plant be situated where there is a supply of pure, fresh water; second, that said plant must be situated at a point where there is an entrance from the banks of the Mississippi River to the marshes where oysters are found and this can only be done by the use of private ways or canals; third, that said plant must be situated at some point where there is a large community capable of furnishing from one hundred to two hundred or more laborers to open these oysters and capable of furnishing the skilled fishermen required to catch same; fourth, that at this time affiant knows of no such point within trading distance of the Louisiana marshes in the state of Louisiana where affiant's corporation can obtain the necessary requisites for the successful operation of a canning plant;

Affiant further says that unless the enforcement of said law is prevented that the boats owned by affiant, as well as boats hired by it will be seized and forfeited and that the servants and agents of affiant employed in carrying out the contract mentioned in the bill of complaint will be arrested and imprisoned and that certain damage is eminent unless the officials of the state of Louisiana are restrained from enforcing said law and that the result of the enforcement of said law will irreparably damage affaint to the extent of many thousands of dollars.

And further affiant sayeth not.

(Signed) B. O. Gunn.

Sworn to and subscribed before me, this 24th. day day of January, A. D. 1928. (Signed) Eugene Peresich, Notary Public. (Seal.)

[fol. 98] AFFIDAVIT OF J. R. MCKINNON ON BEHALF OF PLAINTIFF—Filed January 26, 1928

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public in and for the City of Biloxi, Harrison County, Mississippi, J. R. McKinnon, who being by me first duly sworn did depose and say:

That he is an adult resident of Biloxi, Harrison County, Mississippi, having resided in said County and State for six years; that during the past six years he has been indirectly connected with transportation, particularly with reference to the shipment of shrimp and oysters at Biloxi, Mississippi, that therefore he is familiar with this industry in Biloxi and is somewhat acquainted with it as it is carried on in New Orleans, Louisiana; that at the request of the Biloxi Chamber of Commerce he went to New Orleans, Louisiana on or about the 17th day of January, A. D., 1928, that upon his arrival at New Orleans, Louisiana, he became associated with one Mr. D. J. Goodman, who at that time was investigating the shipment of raw oysters from the State of Louisiana to other states; that in company with Mr. Goodman he made a tour of the oyster shipping business of New Orleans as well as the different railroads of the city, the results of his investigation being as follows:

That in the various plants of those persons engaged in opening and shipping raw oysters, as well as shipping raw oysters in sacks and barrels, he found a very considerable business going on in the shipping of oysters in the shell by means of sacks and barrels to various points in Texas, Mississippi and Tennessee, and upon talking to the men who were running these places of business, were informed that these shipments extended to points as far east as [fol. 99] Florida, and that they were prepared to ship said oysters in the shell to any points at any time and in any quantities; that this business was conducted openly by these persons and no effort was made to conceal from affiant that they were ready, able and willing to violate the shipping of oysters in the shell from Louisiana, but on the contrary the very persons seemed eager to secure new business and

to advertise the fact of their ability to take care of this new business;

That while casually seeing one of the plants, affiant saw in process of shipment a barrel of shell oysters consigned to P. Messina, 1618 Crawford Street, Vicksburg, Mississippi, and a barrel of oysters in the shell shipped to the Carroll Hotel at Vicksburg, Mississippi, this last shipment being made by S. M. Fucich & Sons, who informed affiant that the above persons were shipped a barrel of oysters every other day of the week;

Affiant further states that upon his investigation made in the various express depots that he saw various shipments of oysters in the shell being sent from the State of Louisiana to points outside of the State of Louisiana, but is unable to give the names of the consignees for the reason that the officials of the railroad company would not allow him to secure this information, this being against the rules of the various common carriers of trade in the United States.

Affiant further says that he was with the said Mr. Goodman when he purchased from S. M. Fucich & Sons of New Orleans, a barrel of oysters, with directions for same to be shipped to Vicksburg, Mississippi, and was with the said Goodman when he made various investigations among the raw oyster shippers of New Orleans, and while the said Goodman talked with said oyster shippers and discussed with them the extended manner of their conduct of the raw oyster shipping business, and that the statement was made [fol. 100] by the said Goodman with reference to said investigations while in the company of said affiant, is truly set out in the affidavit of said Goodman;

Affiant further says that during the four days spent in New Orleans, all of which time was actually spent either at the railroad stations or making rounds of the oyster shipping firms of New Orleans; that he saw no evidence whatsoever of the inspection of this business by the state officials of Louisiana, that although he carefully questioned the various persons engaged in said business he was unable to ascertain if any effort was being made by the officials of the State of Louisiana to prevent the shipments hereinabove mentioned, and that from a close and careful and thorough investigation of the shipping of raw oysters from New Orleans covering a period of four days, affiant says

that this business is not a large and profitable business, but that from statements given to affiant from those participating in same, that said business is increasing in size and that neither is there any interruption of same at this time by the law officials of Louisiana, nor does there seem to be in the minds of the persons engaged in said business any expectation of such interruption;

Affiant further states from his knowledge of the oyster business in Biloxi, Mississippi, secured while being engaged in the transportation business at Biloxi, that the business hereinabove related is in direct competition with the business conducted by L. O. Johnson, Jr. of Biloxi, Mississippi, that some of the persons to whom shipments of oysters were being made in New Orleans as hereinabove related is now or have been customers of said L. O. Johnson, Jr., and that the abilty of the Louisiana dealers to ship raw oysters in the shell along with open raw oysters to these persons gives the said Louisiana dealers a vast and important advantage over the said L. O. Johnson, Jr.;

[fol. 101] Affiant further says that in addition to the above that he knows as a matter of fact that the French Restaurant of Biloxi, Mississippi, is compelled to secure its Louisiana oysters from dealers in New Orleans, who ship this oyster in the whole shell by express to the said French Restaurant in Biloxi from New Orleans, Louisiana.

And further affiant sayeth not.

(Signed) J. R. McKinnon.

Sworn to and subscribed before me, this the 25th day of January, A. D. 1928. (Signed) Antonia Peresich, Notary Public. (Seal.)

[fol. 102] AFFIDAVIT OF HENRY WEIDMANN ON BEHALF OF PLAINTIFF—Filed January 26, 1928

(Exhibits Attached to this Affidavit Transmitted in Original by Order of Court)

STATE OF MISSISSIPPI,
County of Lauderdale:

Personally appeared before me, the undersigned authority in and for the jurisdiction aforesaid, Henry Weidmann,

who, by me being first duly sworn, on his oath makes affidavit and says: That he is the manager of Weidmann's Cafe, a restaurant in the City of Meridian, Lauderdale County, Mississippi; that fresh, raw oysters on the half-shell are habitually used and served to customers in said restaurant; that these oysters are usually obtained by said restaurant in the shell, in barrels, by express, from Paul Zibilich Co., Inc., oyster dealers, doing business in the City of New Orleans, Louisiana, and are shipped to said restaurant direct from the City of New Orleans, Louisiana; that these raw oysters in the shell have been obtained from such source since the first day of January, 1928, up to date, without interruption; that these raw oysters in the shell, to be served on the half-shell, can be obtained from such source in any quantity and at any time desired, that is, in a single barrel or a car load of barrels, as the exigencies of business require; that a seven dollar ($7.00) shipment of these raw oysters in the shell, in a barrel, was received by Weidmann's Cafe, by express, cash-on-delivery, through the Southeastern Express Company, on the twenty-second day of January, 1928; that the bill for said shipment of raw oysters in the shell, which was attached, within an envelope, to the barrel in which the shipment was made, is hereto attached, within said envelope, and the two are made Exhibit "A" to this affidavit; that the receipt of the Southeastern Express Company, showing payment for said shipment, is hereto attached and made Exhibit "B" to this affidavit.

Affiant further makes affidavit and says, that there is a printed sign on the front plate-glass window of Weid-
[fol. 103] mann's Cafe to the effect that oysters on the half-shell are served within; and he attaches hereto and makes Exhibit "C" to this affidavit, an accurate photograph of the front of Weidmann's Cafe, showing said sign and the counter from which said oysters are served.

(Signed) Henry Weidmann.

Sworn to and subscribed before me, this 24th day of January, 1928. (Signed) Chas. A. McIntosh, Notary Public. (Seal.) My commission expires Aug. 13, 1930.

[fol. 104] AFFIDAVIT OF C. B. FOSTER ON BEHALF OF PLAINTIFF—Filed January 26, 1928

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, C. B. Foster, who being by me first duly sworn did depose and say:

That he is an adult resident of Biloxi, Mississippi, and has been engaged in the oyster business for many years past and that for this reason is thoroughly familiar with the oyster business as conducted in Louisiana *-dn* Mississippi;

That affiant knows that not only are the oyster beds of Louisiana more than sufficient to care for all possible demands on same, but that in the years past many of these beds have become ruined because of the impossibility of same being properly fished, that is, where oysters are not tonged or dredged to an extent that will take up the new growth these oysters become so thick that they merge into a mass and become what is known as coon oysters, that is their growth and size is destroyed and the oysters become of no commercial value;

That if this condition is allowed to exist for many years the oysters from a dirth of food or from other natural causes die and reefs that would yield untold quantities of oysters for this reason in the past have become extinct and for this reason there is now found in various parts of the [fol. 105] State of Louisiana millions of barrels of dead oysters which make up numerous oyster shell reefs in the State of Louisiana; that at the present time these reefs are being utilized by the state through its Conservation Department for sale to various individuals who take the shells from the reefs and either grind the shells into oyster grit, all of which is shipped from the State of Louisiana or else utilize the shells for the building of roads and for ballasts on railroads;

Affiant further says that any person or non-resident of the State of Louisiana can buy these shells in unlimited quantities, that at this time the shells can be bought and are being bought and shipped out of the state for road

building purposes and the price the State of Louisiana obtains for these shells is two cents per cubic yard;

That unless the oyster reefs of the State of Louisiana are cultivated as they have been cultivated by the taking of oysters therefrom, these reefs will speedily increase and the State of Louisiana will be able to realize from the dead shells only two cents per cubic yard, whereas, the tax alone from the live oysters will yield twenty-one cents per cubic yard;

Affiant further says that at Biloxi, Mississippi, during the past sixty years there has been builded up a great industry in the packing and shipping of oysters and that for this period of time the City of Biloxi has obtained oysters from Louisiana to such an extent that various citizens of Louisiana have come to Biloxi and builded their factories at Biloxi;

That the same industry has attracted hundreds of natives of Louisiana who at this time are temporarily residents of Biloxi engaged in various work around the oyster factories and that this development has extended to such a point that at the present time hundreds of thousands of dollars are invested in this industry and thousands of people are employed in it;

[fol. 106] That the effect of the enforcement of the oyster law as set out in the bill of complaint in this cause would be to compel a removal of these people to less habitable portions of Louisiana and to compel the removal of the various factories in Biloxi, at an expense of thousands of dollars to the owners of these factories and at the expense of untold suffering on those persons who would have to leave their pleasant homes and surroundings in Biloxi and move to the marshy parts of Louisiana where the inhabitants are constantly being tormented by mosquitoes and other insects, and where their health is endangered by improper water supply, etc.;

Affiant further states that only a few of the oysters that can be caught in the marshes of Louisiana referred to in the bill of complaint have ever been packed on the western banks of the Mississippi River, and that on the eastern banks of the Mississippi River, are situated three oyster factories, only two of which are being operated at this time; that these two factories cannot consume more than

one thousand barrels of oysters per day, whereas the possible yield of oysters in the Louisiana marshes east of the Mississippi River is between five and ten thousand barrels per day, without the possibility of any damage to the oyster reefs of Louisiana; that unless this surplus of oysters is caught that the same will speedily grow into masses as hereinabove described and will become valueless, except as dead oyster shells;

That on account of the necessity of obtaining a private entrance to the Louisiana marsh from the banks of the Mississippi River it is almost impossible for the packers to obtain proper sites to pack oysters in Louisiana, and at this time it would be wholly impossible for factories in Biloxi, Mississippi, to obtain the necessary sites or to obtain the necessary labor with which to engage in this business and oysters could only be packed at a great loss unless the price of oysters to persons in various parts of the United States were raised to a great extent;

[fol. 107] Affiant further says that oysters in Louisiana have for years past been recognized as a commodity salable on the open market, that the sole purpose of catching these oysters from the time the fisherman went into the marsh after the oysters was either to sell them and ship them out of the state, or to sell them to factories located in the state for canning, thereafter to be shipped out of the state, and that said oysters have always been regarded as an object of commerce in Louisiana, very few being required by the local citizens of said state, in fact, more than nine-tenths of all the oysters used by citizens of said state having been grown on private beds and all of the marsh oysters having been sold and exported from the state;

Affiant therefore says that the sole purpose of the so called "Louisiana Oyster Law" is to compel the entrance of the Biloxi packers into Louisiana to pack these oysters and not to conserve the oyster supply in Louisiana; that this purpose was expressed by the persons seeking the passage of the law at Baton Rouge, Louisiana and that when the raw oyster dealers of Louisiana came to Baton Rouge in opposition to this law, affiant is informed and believes that they were told that the law would not be enforced except as to oysters going into Mississippi, and affiant is further informed and believes that this promise

has been kept and that at this time in increasing quantities these oysters in the shell are being shipped by the raw dealers of Louisiana to various parts of the United States;

Affiant further states that the oyster shells accumulating from the oysters caught in the Louisiana marshes mentioned in the bill of complaint have been of very small value to citizens of Louisiana, most of said shells having been dumped at the factory; the majority of which said shells after having been dumped have been laying waste at said factories for the past ten or fifteen years, there being practically no market for these shells, due to the fact that the [fol. 108] shells dredged from the marshes of Louisiana are so numerous in extent and so much more easily handled that the persons purchasing these dead shells can sell same at a price way beneath the price that one having shells, the by-products of oysters, can sell same;

Affiant further says that they are informed and believe that thousands of barrels of these oysters have been dumped into bayous of the marshes where they will never be of use or value to any person in the state of Louisiana;

Affiant further says that in affiant's opinion as an experienced oyster man, that there is no possibility of the state of Louisiana suffering any harm whatsoever if an injunction is issued in this case for the reasons stated hereinabove, but that the damage that will accrue to the Sea Food Company and L. O. Johnson, Jr. directly and indirectly to thousands of poor people of Biloxi, Mississippi, will not only be irreparable unless an injunction issue herein, but that it is impossible for affiant to state the amount of suffering and injury that will be caused thousands of poor people residents of Biloxi, a majority of which said persons are at this time legal citizens of the state of Louisiana temporarily residing in Biloxi for the purpose of securing employment; that numbers of these citizens of Louisiana are employed on the boats of the Sea Food Company and other boats utilized by the Sea Food Company in the catching of oysters in Louisiana, and under the laws of the State of Louisiana have a right to fish oysters in that state;

Affiant further states upon information and belief that this law is being openly defied by citizens of Louisiana who export oysters in the raw shell, that this business is con-

stantly increasing in the state and that these oysters are being shipped out of the state to various parts of the United States, and affiant is informed and believes that the Conservation Department has no inspector or no method of inspection whereby this export is being prevented, but that same is done with the knowledge and approval of said Commission.

[fol. 109] And further affiant sayeth not.

(Signed) C. B. Foster.

Sworn to and subscribed before me, this the 25 day of January, A. D. 1928. (Signed) A. S. Mevjlo, Notary Public. (Seal.)

[fol. 110] AFFIDAVIT OF B. TALTAVUL, ON BEHALF OF PLAINTIFF—Filed Jan. 26, 1928

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, B. Taltavul, who being by me first duly sworn did depose and say:

That he is an adult resident of Biloxi, Mississippi, and has been engaged in the oyster business for many years past, and that for this reason is thoroughly familiar with the oyster business as conducted in Louisiana and Mississippi;

That affiant knows that not only are the oyster beds of Louisiana more than sufficient to care for all possible demands on same, but that in the years past many of these beds have become ruined because of the impossibility of same being properly fished, that is, where oysters are not tonged or dredged to an extent that will take up the new growth these oysters become *do* thick that they merge into a mass and become what is known as coon oysters, that is, their growth and size is destroyed and the oysters become of no commercial value;

That if this condition is allowed to exist for many years the oysters from a dirth of food or from other natural causes die and reefs that would yield untold quantities of

oysters for this reason in the past have become extinct and for this reason there is now found in various parts of the state of Louisiana millions of barrels of dead oysters which make up numerous oyster shell reefs in the state of Louisiana; that at the present time these reefs are being utilized by the state through its Conservation Department for sale to various individuals who take the shells from the reefs and either grind the shells into oyster grit, all of which is shipped from the state of Louisiana or else utilize the shells for the building of road and for ballasts on [fol. 111] railroads;

Affiant further says that any person or non-resident of the State of Louisiana can buy these shells in unlimited quantities, that at this time the shells can be bought and are being bought and shipped out of the state for road building purposes and the price the state of Louisiana obtains for these shells is two cents per cubic yard;

That unless the oyster reefs of the state of Louisiana are cultivated as they have been cultivated by the taking of oysters therefrom, these reefs will speedily increase and the state of Louisiana will be able to realize from the dead shells only two cents per cubic yard, whereas, the tax alone from the live oysters will yield twenty-one cents per cubic yard:

Affiant further says that at Biloxi, Mississippi, during the past sixty years there has been builded up a great industry in the packing and shipping of oysters and that for this period of time the City of Biloxi has obtained oysters from Louisiana to such an extent that various citizens of Louisiana have come to Biloxi and builded their factories at Biloxi;

That the same industry has attracted hundreds of natives of Louisiana who at this time are temporarily residents of Biloxi engaged in various work around the oyster factories and that this development has extended to such a point that at the present time hundreds of thousands of dollars are invested in this industry and thousands of people are employed in it;

That the effect of the enforcement of the oyster law as set out in the bill of complaint in this cause would be to compel a removal of these people to less habitable portions

of Louisiana and to compel the removal of the various factories in Biloxi, at an expense of thousands of dollars to the owners of these factories and at the expense of untold suffering on these persons who would have to leave their pleasant homes and surroundings in Biloxi and move to the marshy parts of Louisiana where the inhabitants are constantly being tormented by mosquitoes and other insects, and where their health is endangered by improper water wupply, etc.

Affiant further states that only a few of the oysters that can be caught in the marshes of Louisiana referred to in [fol. 112] the bill of complaint have every been packed on the western banks of the Mississippi River, and that on the eastern bank of the Mississippi River are situated three oyster factories, only two of which are being operated at this time, that these two factories cannot consume more than one thousand barrels of oysters per day, whereas the possible yield of oysters in the Louisiana marshes east of the Mississippi River is between five and ten thousand barrels per day, without the possibility of any damage to the oyster reefs of Louisiana; that unless this surplus of oysters is caught that the same will speedily grow into masses as hereinabove described and will become valueless, except as dead oyster shells.

That on account of the necessity of obtaining a private entrance to Louisiana march from the banks of the Mississippi River it is almost impossible for the packers to obtain proper sites to pack oysters in Louisiana, and at this time it would be wholly impossible for factories in Biloxi, Mississippi, to obtain the necessary sites or to obtain the necessary labor with which to engage in this business and oysters could only be packed at a great loss unless the price of oysters to persons in various parts of the United States were raised to a great extent;

Affiant further says that oysters in Louisiana have for years past been recognized as a commodity salable on the open market, that the sole purpose of catching these oysters from the time the fishermen went into the marsh after the oysters was either to sell them and ship them out of the state, or to sell them to factories located in the state for canning, thereafter to be shipped out of the state, and that said oysters have always been regarded as an object of

commerce in Louisiana, very few being required by the local citizens of said state, in fact, more than nine-tenths of all the oysters used by citizens of said state having been grown on provate beds and all of the marsh oysters having been sold and exported from the state;

Affiant therefore says that the sole purpose of these — called "Louisiana Oyster Law" is to compel the entrance of the Biloxi packers into Louisiana to pack these oysters and not to conserve the oyster supply in Louisiana; that this purpose was expressed by the persons seeking the passage of the law at Baton Rouge, Louisiana, and that when the raw oyster dealers of Louisiana came to Baton Rouge in opposition to this law, affiant is informed and be- [fol. 113] lieves that they were told that the law would not be enforced except as to oysters going into Mississippi, and affiant if further informed and believes that this promise has been kept and that at this time in increasing quantities these oysters in the shell are being shipped by the raw dealers of Louisiana to various parts of the United States.

Affiant further states that the oyster shells accumulating from the oysters caught in the Louisiana marshes mentioned in the bill of complaint have been of very small value to citizens of Louisiana, most of said shells having been dumped at the factory, the majority of which said shells after having been dumped have been laying waste at said factories for the past ten or fifteen years, there being practically no market for these shells, due to the fact that the shells dredged from the marshes of Louisiana are so numerous in extent and so much more easily handled that the persons purchasing these dead shells can sell same at a price way beneath the price that one having shells, the by-products of oysters, can sell same;

Affiant further says that they are informed and believe that thousands of barrels of these oysters have been dumped into bayous of the marshes where they will never be of use or value to any person in the state of Louisiana;

Affiant further says that in affiant's opinion as an experienced oyster man, that there is no possibility of the state of Louisiana suffering any harm whatsoever if an injunction is issued in this case for the reasons stated hereinabove, but that the damage that will accrue to the Sea Food Company and L. O. Johnson, Jr. directly and

indirectly to thousands of poor people of Biloxi, Mississippi, will not only be irreparable unless an injunction issue herein, but that it is impossible for affiant to state the amount of suffering and injury that will be caused thousands of poor people residents of Biloxi, a majority of which said persons are at this time legal citizens of the state of Louisiana temporarily residing in Biloxi for the purpose of securing employment, that numbers of these citizens of Louisiana are employed on the boats of the Sea Food Company and other boats utilized by the Sea Food Company in the catching of oysters in Louisiana, and under the laws of the state of Louisiana have a right to fish oysters in that state;

[fol. 114] Affiant further states upon i-formation and belief that this law is being openly defied by citizens of Louisiana who export oysters in the raw shell, that this business is constantly increasing in the state and that these oysters are being shipped out of the state to various parts of the United States, and affiant is informed and believes that the Conservation Department has no inspector or no method of inspection whereby this export is being prevented, but that same is done with the knowledge and approval of said Commission,

And further affiant sayeth not.

(Signed) B. Taltavull.

Sworn to and subscribed before me, this 24th. day of January, A. D., 1928. (Signed) A. S. Gorenflo, Notary Public. (Seal.)

[fol. 115] AFFIDAVIT OF LOUIS BRAUN ON BEHALF OF PLAINTIFF—Filed January 26, 1928

[Title omitted]

Personally appeared before me, the undersigned authority a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, Louis Braun, who being by me first duly sworn did depose and say;

That not only does the state of Louisiana through its Conservation Department patrol the waters of the Missis-

sippi Sound for the purpose of intercepting boats carrying oysters from Louisiana to Mississippi, but in addition thereto said Conservation Department has stationed at Biloxi, Mississippi, a deputy inspector of conservation who watches and detects the entrance into the harbor of Biloxi of any and all oysters that come from Louisiana to Biloxi, thereby taking every effective precaution for the purpose of preventing any violation of the law by citizens of the State of Mississippi.

And further deponent sayeth not.

(Signed) Louis Braun.

Sworn to and subscribed before me, this the 24th day of January, A. D. 1928. (Signed) A. S. Mevjlo, Notary Public. (Seal.)

[fol. 116] AFFIDAVIT OF GEORGE BIRRELL ON BEHALF OF DEFENDANT—Filed January 26, 1928

[Title omitted]

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, personally came George Birrell, who on being duly sworn, deposed and said:

That he is a resident of New Orleans; that he is President of the Caernarvon Canning Co. Inc. of Louisiana, domiciled in New Orleans, with factory location at Caernarvon, in the Parish of Plaquemines; and that he is actively engaged in the business of fishing and canning oysters; and he is personally familiar with the oyster supply from the natural reefs and oyster bedding grounds in this State, particularly those lying East of the Missisippi River.

That as a result of the creation of the Bohemia Spillway in about the latter part of the year 1925, and also the creation of the Caernarvon artificial crevasse in April 1927, the largest part of the oyster reefs and beds south of Dead Men's Island were destroyed; and consequently the oyster supply in that vast territory called the South Louisiana marshes which furnished the Louisiana fishermen and factories with oysters has been eliminated.

That as a further result of said spillways the oyster supply remaining will barely furnish the present Louisiana fisherman and factories for about three months; and if the Mississippi fishermen are allowed to encroach upon this territory and take the Louisiana oysters out of the State in the shell, the beds will be permanently depleted, and the present oyster supply will not last thirty days That this statement is made from past experience with the Mississippi oyster fishermen following upon the 1922 crevasse at Poydras, which also destroyed large oyster reefs.

[fol. 117] That there exists no good reason in law or in equity therefore why the Mississippi fishermen and canning factories should be granted any extended delays by the further orders of this Honorable Court to defeat the purpose of the Louisiana law to preserve this valuable natural resource.

(Signed) Geo. Birrell.

Sworn to and subscribed before me this 26th day of January, 1928. (Signed) H. W. Niehues, Deputy Clerk, U. S. District Court, Eastern District of Louisiana.

[fol. 118] AFFIDAVIT OF DR. V. K. IRION, ON BEHALF OF DEFENDANTS—Filed January 26, 1928

[Title omitted]

Before me, the undersigned authority, on this 25th day of January, 1928, personally came and appeared Dr. V. K. Irion, to me personally known, who being by me first duly sworn did depose as follows:

I am Conservation Commissioner for the State of Louisiana. Mr. James N. McConnell, is the director of the Oyster Division of the Department of Conservation under my appointment.

I know, as a matter of fact, that large use is being made in the State of Louisiana of the oyster shells gathered from the waters of said state. There are in the parish of St. Mary, at Berwick and at Morgan City, Louisiana, two large shell crushing factories, one at each place, making chicken feed out of oyster shells. There is another factory

that has been erected on the Hays Canal in Plaquemines Parish, which is not yet in operation, but it is expected will shortly be put in operation.

Large use of oyster shells for road building and ballast purposes is being made also of the oyster shells from Louisiana waters.

I am advised that there have been filed in connection with the Bill of Complaint in this matter affidavits to the effect that to my knowledge oysters in the shell are permitted to be exported from the State of Louisiana. This assertion of fact is not true. I do not deny that there may be some bootlegging in raw oysters as bootlegging is done in other articles. I have endeavored and am continuing to endeavor, through all my officers, to impartially enforce the oyster [fol. 119] law of the State of Louisiana, and none of my officers nor do I knowingly permit any violations of the conservation laws of Louisiana.

The oyster law of Louisiana was enacted to conserve and protect the oyster industry. I do not believe, nor do I consider that the supply of oysters in Louisiana is inexhaustible, on the contrary, it is necessary that conservation measures should be applied to this fisheries industry in order that Louisiana may escape the fate of Maryland, and as I am advised, the State of Mississippi in the depletion of her own natural reefs until she took steps to conserve them.

(Signed) V. K. Irion.

Sworn to and subscribed to before me this 25th day of January, 1928. (Signed) Michael M. Irwin, Notary Public. (Seal.)

[fol. 120] AFFIDAVIT OF JAMES N. MCCONNELL ON BEHALF OF THE DEFENDANTS—Filed January 26, 1928

[Title omitted]

Before me, the undersigned authority, on this 25th day of January, 1928, personally came and appeared James N. McConnell, to me personally known, who being by me first duly sworn, did depose as follows:

I am the director of the Oyster Division of the Department of Conservation, and it comes within my duties to enforce the provisions of Act 258 of the Legislature of the State of Louisiana for the year 1926, known as the oyster law.

The provisions of this law, which law was adopted in the legislative session of 1926, these provisions applying to the prohibition of the exportation of oysters in the shell from Louisiana, did not go into effect until January 1, 1928, this being done to give the oyster canning factories in Mississippi an opportunity to acquire sites and build their factories in Louisiana.

A similar provision in the shrimp law of Louisiana brought several of the shrimp canning factories into Louisiana where they might enjoy the natural resources from the waters of Louisiana.

There are many sites in Louisiana that would be suitable for the erection of oyster canning factories in this state. Dunbar-Dukate Company has bought a site at Slidell, Louisiana, to which he intends to move his Biloxi, Mississippi canning factory as soon as this Louisiana law governing oysters is enforced.

[fol. 121] The Conservation Department of Louisiana is prepared to enforce this Louisiana law and has been enforcing it against everyone until restrained in this case by the court order.

There is great use made in Louisiana of oyster shells and this use is increasing. They are used for chicken feed when ground, and the demand for this is larger than the present supply. There is one large factory at Berwick, La., and another at Morgan City, La., and there is a factory just completed in Plaquemines Parish on the west bank of the Mississippi River. Whereever oyster shells are available they are largely used for road building, and they can be used for fertilizer when converted into lime. One of the most important uses for oyster shells is as cultch where the shells are returned to the waters for the purpose of the young oyster spat setting thereon for propagation purposes, and vast quantities are used for this purpose. Where the Louisiana reefs are depleted of the oysters by the fishermen who remove the oysters in

the shell beyond the state, these shells never come back to Louisiana, and there is nothing done to develop the reefs or keep them producing.

Oyster shells are largely used for railroad track ballasting on account of the soft, alluvial character of the Louisiana soil.

So far as I have any knowledge, there are no oysters in the shells permitted to go outside the state, and my force is instructed to prevent that being done. If it is done, it is done surreptitiously and without the knowledge of any of our officers.

The supply of oysters in Louisiana is not inexhaustible and it is necessary that conservation measures be applied thereto in order to insure an ample supply of oysters.

(Signed) James N. McConnell.

Sworn to and subscribed to before me this 25th day of January, 1928. (Signed) Michael M. Irwin, Notary Public.

[fol. 122] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER PERMITTING CLERK TO TRANSMIT CERTAIN EXHIBITS IN THE ORIGINAL—Filed February 1, 1928

It is ordered, adjudged and decreed that the Clerk of this Court, in preparing the record for the Supreme Court of the United States, may, where necessary or desirable, include in the record, the original of any document, photograph or exhibit forming part of the record.

Ordered, adjudged and decreed this the 30th day of January, 1928.

(Signed) Louis H. Burns, District Judge.

[fol. 123] IN UNITED STATES DISTRICT COURT

NOTE AS TO ORIGINAL EXHIBITS TRANSMITTED

The following exhibits are transmitted in the original; under order of court, said order being copied at page 122 of this transcript:

One letter and one check attached to affidavit of Anna R. Heidenhein.

American Railway Express Company receipt; statement of Paul Zibilich Company; four photographs and one letter attached to affidavit of Theodore Grillis.

One letter; one statement; two invoice tags; and one American Railway Express Company receipt attached to affidavit of E. J. Misticos.

One bill of fare; one statement; two Southeastern Express Company receipts; one American Railway Express Company receipt; one statement; one bill of fare; two photographs attached to affidavit of D. J. Goodin.

One statement; one bill of fare attached to affidavit of W. H. Lucas.

One invoice tag; one Southeastern Express Company receipt and one photograph attached to affidavit of Henry Wiedmann.

[fol. 124] IN UNITED STATES DISTRICT COURT

[Title omitted]

DECREE RECALLING TEMPORARY RESTRAINING ORDER AND DENYING COMPLAINANT'S APPLICATION FOR AN INTERLOCUTORY INJUNCTION—Filed January 26, 1928

This cause came on to be heard on the application of complainant for a preliminary injunction, and was submitted upon the pleadings and evidence and argument of counsel, and the Court having considered the same;

It is ordered, adjudged and decreed that the temporary restraining order heretofore issued herein be recalled and set aside, and;

It is further ordered, adjudged and decreed that the application of complainants for an interlocutory injunction herein be and the same is hereby denied.

New Orleans, Louisiana, January 26th, 1928.

(Signed) Rufus E. Foster, United States Circuit Judge; E. R. Holmes, United States District Judge; Louis H. Burns, United States District Judge.

[fol. 125] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed January 26, 1928

To the Honorable Rufus E. Foster, Circuit Judge, Louis H. Burns and Edwin R. Holmes, District Judges, Composing said Court:

Now come L. O. Johnson, Sr. and the Sea Food Company, complainants, Tanos Hebert and Charles Bordeau, intervening petitioners in the above-entitled cause, and conceiving themselves aggrieved by the order and decree made and entered by the above named Court in the above entitled cause on the 26th day of January, 1928, wherein, among other things, said Court, composed of Judge Rufus E. Foster, Circuit Judge, Judge Louis H. Burns and Judge Edwin R. Holmes, District Judges, under Section 266 of the United States Judicial Code, denied the complainants' application for an interlocutory injunction in said cause and recalled the restraining order previously issued in said cause, do hereby appeal to the Supreme Court of the United States from said order and decree, and especially that portion of it denying and refusing the complainants application for an interlocutory injunction and recalling the order allowing a restraining order previously granted and rendered in said cause, all of which reasons are set forth in the assignment of errors which is filed herewith. In view of the fact that complainants will sustain irreparable harm and damage by reason of the failure and refusal of said Court to grant them an interlocutory injunction, and by reason of the Court's recalling the restraining order previously granted in said cause, these complainants pray that this their petition for appeal may be allowed and that an order be made by said Court pending said appeal in the Supreme Court of the United States reinstating the temporary restraining order previously granted in said cause by the Honorable Louis [fol. 126] H. Burns, District Judge, and granting to the complainants an interlocutory injunction pending the hearing and determination of said cause on appeal to the Supreme Court of the United States.

Complainants further pray that a transcript of the record proceedings and papers upon which said order was made,

duly authenticated, may be sent to the Supreme Court of the United States at Washington, D. C.

Dated this, the 26 day of January, 1928.

(Signed) W. Lee Guice, Gustave Lemle, Watkins, Watkins & Eager, John McCloskey, Attorneys for Complainants L. O. Johnson, Sr. and Sea Food Company.

[fol. 127] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL, ETC.

This day this cause came on to be heard on the application of the complainants and intervenors in the above-entitled cause for an appeal to the Supreme Court of the United States from the decree rendered in this cause by three Judges denying the complainants' application for an interlocutory injunction and recalling the temporary restraining order previously issued by the Honorable Louis H. Burns, District Judge on the 20th day of January, 1928. It is ordered, adjudged and decreed that said appeal be and is hereby allowed; and it appearing to the Court that the complainants will sustain irreparable harm and damage, it is ordered, adjudged and decreed that, pending the appeal from the decree in said cause to the Supreme Court of the United States, that portion of the decree appealed from, withdrawing the temporary restraining order heretofore issued, as aforesaid, be and is hereby revoked, suspended and set aside, and said restraining order be and is hereby retained pending the hearing and determination of said cause on appeal before the Supreme Court of the United States, provided the complainants shall execute and file in this cause a bond to be approved by the Clerk of this Court, in the penal sum of Ten Thousand Dollars payable to the State of Louisiana, conditioned as provided by law.

Ordered, adjudged and decreed, this the 26th day of Jan., 1928.

(Signed) Rufus E. Foster, Circuit Judge; Louis H. Burns, District Judge; E. R. Holmes, District Judge.

[fol. 128] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed January 26, 1928

Now, come complainants, L. O. Johnson, Sr., and the Sea Food Company, Tanos Herbert, Chas. Bordeaux, intervening petitioners and file the following asignment of errors, upon which they will rely on their appeal from the decree made by this Court on the 26th day of January, 1928, in the above entitled cause:

(1) The Court erred in denying the complainants' application for an interlocutory injunction.

(2) The Court erred in recalling the temporary restraining order granted by the Honorable Louis H. Byrnes, District Judge, upon the 20th day of January, 1928.

(3) The Court erred in not granting an interlocutory injunction to the complainants on their application therefor, and in holding that the complainants were not entitled to an interlocutory injunction on their said application.

(4) The Court erred in not retaining the restraining order issued by the said Louis H. Byrnes, District Judge, as aforesaid.

(5) The Court erred in holding that the complainants were not entitled to the interlocutory injunction applied for.

(6) Other causes to be shown at the hearing.

(Signed) W. Lee Guice, Gustave Lemle, John McCloskey, Watkins, Watkins & Eager.

[fols. 129 & 130] Bond on appeal for $10,000 approved and filed Jan. 26, 1928, omitted in printing.

[fol. 131] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed February 1, 1928

1. Original Bill of Complaint with all exhibits thereto; and petition of intervention.
2. Decree District Judge granting temporary restraining order.
3. Temporary restraining order with returns thereupon.
4. Motion of complainants for interlocutory injunction.
5. Return of all defendants.
6. Each and every affidavit offered by complainants with exhibits thereto.
7. Each and every affidavit offered by defendants with exhibits thereto.
8. Memorandum of all testimony offered in open court by the complainants and the defendants on the hearing of the aplication for interlocutory injunction.
9. Copy of charter of Sea Food Company.
10. Decree permitting the intervention of Tanas Herbert and Charles Bordeau.
11. Order denying application for interlocutory injunction.
12. Petition for appeal to the Supreme Court of the United States, with application for reinstatement of tempoorary restraining order.
13. Decree of three judges allowing appeal, reinstating temporary restraining order.
14. Assignment of error.
15. Bond on appeal.
16. Each and every decree or order entered in the cause [fol. 132] not herein before specifically set out.

(Signed) W. L. Guice, Watkins, Watkins & Eager, Attorneys for Complainants and Intervening Petitioners.

STATE OF MISSISSIPPI,
Hinds County:

Personally came before me, the undersigned officer in and for the aforesaid state and county, the within named

William H. Watkins, of counsel for complainants in the above entitled cause, who by me being duly sworn makes oath that he has this day sent by United States Mail, postage prepaid to the Honorable Percy Saint, Attorney General of the State of Louisiana, at New Orleans, in the State of Louisiana, a true and correct copy of the foregoing præcipe.

(Signed) William H. Watkins.

Sworn to and subscribed before me this 28 day of January, 1928. (Signed) Louis Melton, Notary Public (Seal.)

[fol. 133] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 134-141] Citations in usual form showing service on Ernest Alberti, et al., omitted in printing.

[fols. 142 & 143] UNITED STATES SUPEME COURT

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed February 21, 1928

Appellants and plaintiffs in error deem that the parts of the record hereinafter referred to are necessary for a proper consideration of the case:

1. The original bill of complaint with all exhibits thereto.

2. Decree of district judge granting temporary restraining order.

3. Application of plaintiff in error for a permanent injunction.

4. Each and every affidavit offered by plaintiffs in error, with exhibits thereto.

5. Copy of the charter of the Seafood Company.

6. Each and every affidavit offered by defendant in error, with exhibits thereto.

7. Order denying application for interlocutory injunction.

8. Petition for appeal with application for reinstatement of temporary restraining order.

9. Decree of three judges allowing an appeal reinstating temporary restraining order.

10. Assignment of error.

W. H. Watkins, Gustave Lemle, W. L. Guice, Attorneys for Appellants and plaintiffs in error.

[fol. 144] STATEMENT OF APPELLANTS AND PLAINTIFFS IN ERROR UNDER PARAGRAPH 9, RULE 11—POINTS ON WHICH THEY EXPECT TO RELY

Point 1

Act 258 passed at the session of the Louisiana legislature of 1926, approved July 14, 1926, each and every section thereof, especially Sections 2, 3, 13, 14, 15, 21, 22, 23, 24 and 29 of said act, are in contravention of and violate the Fourteenth Amendment to the Constitution of the United States, in that said act, and each and every section thereof, and especially the sections hereinbefore specifically enumerated, deprive appellants and plaintiffs in error, and each of them, of their property without due process of law, and deny to the plaintiffs in error and appellants and each of them the equal protection of the law.

Point 2

Act 258 passed at the 1926 session of the Louisiana legislature, approved July 14, 1926, and each and every section thereof, and especially sections 2, 3, 13, 14, 15, 21, 22, 23, 24 and 29 of said act, as enforced and construed by the officers of the state of Louisiana, charged with the enforcement of said act, are in contravention of and violate the Fourteenth Amendment to the Constitution of the United

States, in that said act and each and every section thereof, and especially the sections hereinbefore specifically enumerated, deprive appellants and plaintiffs in error and each of them of their property without due process of law, and deny to the plaintiffs in error and appellants and each of them the equal protection of the law.

[fol. 145] Point 3

Act #258 passed at the 1926 session of the Louisiana legislature, approved July 14, 1926, each and every section thereof, and especially sections 2, 3, 13, 14, 15, 21, 22, 23, 24 and 29 of said act, violate paragraph three (3) Section eight (8) Article One (1) of the Constitution of the United States, known as the Commerce Clause of the Constitution of the United States.

Point 4

Act #258 passed at the 1926 session of the Louisiana legislature, approved July 14, 1926, each and every section thereof, and especially sections 2, 3, 13, 14, 15, 21, 22, 23, 24 and 29 of said act, as enforced and construed by the officers of the state of Louisiana charged with enforcement thereof, are in contravention of and violate paragraph three (3) section eight (8) Article one (1) of the Constitution of the United States, known as the Commerce Clause of the Constitution of the United States.

Point 5

Act #258 passed at the 1926 session of the Louisiana legislature, approved July 14, 1926, each and every section thereof, and especially sections 2, 3, 13, 14, 15, 21, 22, 23, 24 and 29 of said act, are in contravention of and violate paragraph one (1) section ten (10) Article one (1) of the Constitution of the United States, prohibiting a state from passing any law impairing the obligation of contracts.

Point 6

Act #258 passed at the 1926 session of the Louisiana legislature, approved July 14, 1926, each and every section thereof, and especially sections 2, 3, 13, 14, 15, 21, 22, 23, 24

and 29 of said act, as enforced and construed by the officers of the state of Louisiana charged with enforcement thereof, are in contravention of and violate paragraph one (1) section ten (10) Article one (1) of the Constitution of the United States, prohibiting a state from passing any law impairing the obligation of contracts.

[fol. 146] Point 7

Act #258 passed at the 1926 session of the Louisiana legislature, approved July 14, 1926, each and every section thereof, and especially sections 2, 3, 13, 14, 15, 21, 22, 23, 24, and 29 of said act, and each of them, are in contravention of and violate paragraph one (1) section two (2) article four (4) of the Constitution of the United States, providing that the citizens of each state shall be entitled to the privileges and immunities of citizens of the several states.

Point 8

Act #258 passed at the 1926 session of the Louisiana legislature, approved July 14, 1926, each and every section thereof, and especially sections 2, 3, 13, 14, 15, 21, 22, 23, 24 and 29 of said act, and each of them, as construed and enforced by the officers of the state of Louisiana charged with enforcement thereof, are in contravention of and violate paragraph one (1) section two (2) article four (4) of the Constitution of the United States, providing that the citizens of each state shall be entitled to the privileges and immunities of citizens of the several states.

Point 9

Act #258 passed at the 1926 session of the Louisiana legislature, approved July 14, 1926, each and every section thereof, and especially Sections 2, 3, 13, 14, 15, 21, 22, 23, 24 and 29 of said act, and each of them, are in contravention of and violate section fourteen (14) article nineteen (19) of the Constitution of the state of Louisiana, prohibiting conspiracies and combinations in restraint of trade, monopolies, etc.

Point 10

The three-judge court should have granted the application of appellants and plaintiffs in error for an interlocu-

tory injunction pending the hearing under the pleadings and proof in the case. Their failing and refusing to do so was error.

[fol. 147] Point 11

The record discloses serious questions of law arising under the federal constitution and serious questions of discrimination supported by affidavits and proof, and that the plaintiffs in error and appellants will sustain serious and irreparable harm and injury by reason of the failure of the three-judge court to grant the application of appellants and plaintiffs in error for an interlocutory injunction pending the hearing. It was, therefore, error not to grant the application of appellants and plaintiffs in error.

Point 12

The granting of the interlocutory injunction prayed for by appellants and plaintiffs in error was required in order to prevent appellants and plaintiffs in error from suffering irreparable harm and injury pending the hearing and determination of the validity of the Louisiana act complained of and each section thereof as being in violation of the federal constitution of the United States hereinbefore referred to, and in view of the seriousness of the alleged charges in respect to the invalidity of said act and the especial sections thereof hereinbefore set out, and in view of the affidavits filed in support thereof, and in view of the irreparable harm, injury and damage which the appellants and plaintiffs in error will suffer by reason of the enforcement of the act, the three-judge court should have granted the application of plaintiffs in error and appellants for an interlocutory injunction pending the hearing and determination in this cause.

Point 13

The hearing and determination of the correctness of the action of the three-judge court in failing and refusing to grant to the plaintiffs in error and appellants an interlocutory injunction pending the hearing of said cause on the merits, this court will accept as true the affidavit and proof offered by the appellants and plaintiffs in error in support of the allegations contained in the original bill of complaint.

[fol. 148] Point 14

In determining as to whether or not the three-judge court committed error in failing and refusing to grant plaintiffs in error and appellants an interlocutory injunction pending the hearing and determination of this cause, on final hearing, this court will consider the affidavits and proof offered by plaintiffs in error and defendants de novo, and will determine for itself as to whether or not the application of appellants and plaintiffs in error should have been granted.

Point 15

Where a state statute is attacked as being in violation of the constitution of the United States, and charges of invalidity are made in good faith, and are serious, or where the allegations and proof contain charges of discrimination in the enforcement of the act, and where the plaintiffs will suffer irreparable harm, injury and damage by reason of the enforcement thereof, an interlocutory injunction should always be granted pending the hearing and determination of the cause on the merits.

Point 16

Act #258 passed at the 1926 session of the Louisiana legislature, approved July 14, 1926, and especially sections 2, 3, 13, 14, 15, 21, 22, 23, 24 and 29 of said act, were not passed by the legislature of the state of Louisiana in the legitimate exercise of its police powers, but are a mere subterfuge, and as passed and enforced, directly affect and obstruct interstate commerce between the states and foreign countries.

Point 17

Act #258 passed at the 1926 session of the Louisiana legislature, approved July 14, 1926, and especially sections 2, 3, 13, 14, 15, 21, 22, 23, 24 and 29 of said act, were not passed in the exercise of any legitimate police power of the state of Louisiana, but as passed and enforced were intended and do deprive appellants and plaintiffs in error of their property without due process of law and deny them the equal protection of the law.

[fols. 149 & 150] Point 18

A state, in the exercise of its police power, can pass no law directly affecting interstate commerce.

Point 19

Act #258 passed at the 1926 session of the Louisiana state legislature, and especially sections 2, 3, 14, 15, 21, 22, 23, 24 and 29 of said act, were not passed for the purpose of conserving the natural resources of the state, but passed for the purpose alleged, and in the enforcement and operation thereof necessarily violate the Fourteenth Amendment of the Constitution of the United States, in the particulars hereinbefore set forth, and imposes a direct burden upon interstate commerce.

Point 20

Under the facts in this case and the law applicable thereto the application for interlocutory injunction should have been granted.

——, ——, ——, Attorneys for Plaintiffs in Error and Appellants.

[fol. 151] Received Feb. 21, 1928. Office of the Clerk, Supreme Court U. S.

STATE OF MISSISSIPPI,
Hinds County:

Personally came before the undersigned officer in and for the aforesaid state and county, the within named William H. Watkins, who by me being first sworn, makes oath that he is one of the attorneys for the plaintiffs in error and appellants in the case of L. O. Johnson, Sr., and Seafood Company vs. Louis Meraud et als. being cause No. 769 on the docket of the Supreme Court of the United States, October Term, 1927; that he is authorized to make this affidavit; that upon the 18th day of February, 1928, he sent to the Honorable Percy Saint, Attorney-General of the State of Louisiana, a true and correct copy of the statements and

the points on which appellants and plaintiffs in error expect to rely, in the Supreme Court of the United States, in the prosecution of their appeal in said case, and of the parts of the record which they think necessary for the consideration thereof.

W. H. Watkins.

Sworn to and subscribed before me this the 18th day of February, 1928. M. J. Conerly, Notary Public. (Seal: M. J. Conerly, Notary Public, Hinds County, Mississippi.)

[fol. 152] [File endorsement omitted.]

IN UNITED STATES SUPREME COURT

DESIGNATION OF ADDITIONAL PARTS OF RECORD TO BE PRINTED—Filed Mar. 2, 1928

Hon. Charles Elmore Cropley:

Print entire record Haydel cases as filed in your office including portions designated by appellants as well as all other portions not designated by them.

Peyton R. Sandoz, Asst. Attorney General, 403 New Court Bldg.

Endorsed on cover: File No. 33,221. E. Louisiana D. C. U. S. Term No. 769. L. O. Johnson, Jr., and Sea Food Company, Tanas Hebert, et al., appellants, vs. E. J. Haydel, Fred Schouest, L. R. Cabriac, et al. Filed February 14th, 1928. File No. 33,221.

FILE COPY

Office Supreme Court, U. S.
FILED
FEB 20 1928
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

6

68 - 69

No. 768 and No. 769 Consolidated.

L. O. JOHNSON ET ALS., COMPLAINANTS-APPELLANTS

against

L. A. MERAUX ET ALS., RESPONDENTS,

and

FOSTER FOUNTAIN CO. ET ALS., COMPLAINANTS-APPELLANTS,

against

E. J. HAYDEL ET ALS., RESPONDENTS.

And now come Percy Saint, Attorney General of the State of Louisiana, Peyton R. Sandoz and M. M. Irwin, Assistant Attorneys General of Louisiana, and John Dymond, Jr., Special Counsel for the Department of Conservation of Louisiana, herein appearing

for and on behalf of Valentine Irion, Conservation Commissioner of the State of Louisiana, L. A. Meraux, Sheriff of the Parish of St. Bernard, Louisiana, and the other respondents in the above cause, and move the court to advance said consolidated causes for hearing on the docket of this Court and to assign them for as early a hearing as possible, for the reasons that these consolidated causes involve the restraining *vel non* of the enforcement of the oyster and shrimp laws of the State of Louisiana, and that a three judge court in the United States District Court for the Eastern District of Louisiana denied interlocutory injunctions in said causes, but in granting appeals to this Court stayed the execution of said laws pending these appeals, and that it is extremely essential to the State of Louisiana, and the Conservation Department thereof, that an early decision by this Court should be had on said appeals, because they affect the revenues and the enforcement of penal laws of the State of Louisiana.

PERCY SAINT,
Attorney General of Louisiana,

PEYTON R. SANDOZ,
Assist. Atty. Gen. of Louisiana,

M. M. IRWIN,
Assist. Atty. Gen. of Louisiana,

JOHN DYMOND, JR.,
Special Counsel,
Attorneys for Respondents.

We take cognizance of the above motion, waive notice thereof and consent to and concur therein.

W. H. WATKINS,
W. L. GUICE,
GUSTAVE LEMLE,
JOHN McCLOSKY,
Attorneys for Complainants-Appellants.

ORDER.

Considering the above motion by respondents herein, and the concurrence of complainants-appellants herein,

IT IS ORDERED that the consolidated causes entitled Foster Fountain Co. *et al. versus* E. J. Haydel *et al.*, and L. O. Johnson *et al. versus* L. A. Meraux *et al.*, Nos. 768 and 769, October term, 1927, consolidated, be and the same are hereby assigned and set down for hearing —— —, 1928.

WASHINGTON, D. C., *February* 20, 1928.

Chief Justice Supreme Court of the United States.

FILE COPY

Office Supreme Court, U. S.
FILED
FEB 20 1928
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 769 69

L. O. JOHNSON ET ALS., COMPLAINANTS-APPELLANTS,

against

L. A. MERAUX ET ALS., RESPONDENTS.

And now come Percy Saint, Attorney General of the State of Louisiana; Peyton R. Sandoz, and M. M. Irwin, Assistant Attorneys General of Louisiana, and John Dymond, Jr., Special Counsel for the Department of Conservation of Louisiana, herein appearing for and on behalf of Valentine Irion, Conservation Commissioner of the State of Louisiana; L. A. Meraux, Sheriff of the Parish of St. Bernard, Louisiana, and the other respondents in the above cause, and move the court to consolidate this cause with the cause entitled Foster Fountain Co. *et al. against* E. J. Haydel *et al.*, No. 768, October term, 1927, of this Court, for the reason that both of said appeals came up from

the District Court of the United States for the Eastern District of Louisiana, from decrees denying interlocutory injunctions to restrain the enforcement of the oyster and shrimp laws enacted by the Legislature of the State of Louisiana, being Acts 258 and 103 of the Legislative Session of 1926, and the subject-matter in both causes being for all practical purposes identical, and involving identical constitutional questions.

PERCY SAINT,
Attorney General of Louisiana,

PEYTON R. SANDOZ,
Assist. Atty. Gen. of Louisiana,

M. M. IRWIN,
Assist. Atty. Gen. of Louisiana,

JOHN DYMOND, JR.,
Special Counsel,
Attorneys for Respondents.

We take cognizance of the above motion, waive notice thereof and consent to and concur therein.

W. H. WATKINS,
W. L. GUICE,
GUSTAVE LEMLE,
JOHN McCLOSKY,
Attorneys for Complainants-Appellants.

ORDER.

Considering the motion by respondents herein and the concurrence of complainants-appellants therein, it

is ordered that this cause be and it is hereby consolidated with cause entitled Foster-Fountain Company *et al. against* E. J. Haydel *et al.*, No. 768 of the docket of this Court, October term, 1927, the records to be printed separately.

Chief Justice Supreme Court
of the United States.

WASHINGTON, D. C., *February* 20, 1928.